
# The 65th Annual Meeting and 70th Anniversary of the IAJ

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## CC



## Vaclav Havel Price

# BRIEF HISTORY AND INFORMATION OF THE IAJ

The International Association of Judges was founded in Salzburg (Austria) in 1953. It is a professional, non-political, international organization, bringing together national associations of judges, not individual judges, approved by the Central Council for admission to the Association.

The main aim of the Association is to safeguard the independence of the judiciary, which is an essential requirement of the judicial function, guaranteeing human rights and freedom.

The organization currently encompasses 94 such national associations or representative groups, from five continents.

The Central Council of the IAJ is its executive body. Each member association has two representatives in the Council. The Central Council meets annually, preferably in a different country every year.

At the Rome based online meeting, which took place during the month of September 2021, Mr. José Igreja Matos, judge from Portugal, was elected President of the IAJ for the following two years. Mr. Giacomo Oberto, judge of the Civil Court in Turin, was confirmed Secretary-General for a fifth mandate.

The Association has consultative status with the United Nations (with specific reference to the International Labour Office and the U.N. Economic and Social Council) and with the Council of Europe.

The Association has four Study Commissions, dealing respectively with judicial administration and status of the judiciary, civil law and procedure, criminal law and procedure, public and social law. These commissions are composed of delegates from national associations. They meet annually in the same location as the Central Council. Based on the national reports received, the members of the commissions study and discuss problems of common interest, pertaining to the justice process, on a comparative and transnational basis.

The Association has four Regional Groups:

The European Association of Judges (44 Countries);
The African Group (20 Countries);
The Iberoamerican Group (19 Countries);
The Asian, North American and Oceanian Group (15 Countries).

Periodically, the Association organizes an International Congress:
List of the places where the 64 IAJ annual meetings took place

At the last meeting in Tel Aviv (Israel), in September 2022, the Study Commissions discussed the following subjects:
"Disciplinary proceedings and judicial independence" (1st Study Commission); "How data protection rules are impacting on civil litigation" (2nd Study Commission); "Restrictions by the criminal law of the freedom of speech" (3rd Study Commission); "What is the impact of the judicial workplace (including appointment, independence of decision making, governance, assignments, funding and other resources) on judicial independence?" (4th Study Commission).

The following subjects will be discussed by the Study Commissions in 2023:

1st Study Commission: "The effects of remote work on the judicial workplace and the administration of justice";

2nd Study Commission: "How data protection rules are impacting on the way judges work in civil litigation";

3rd Study Commission: "Mutual cooperation in the investigation of criminal cases and in the presentation of evidence";

4th Study Commission: "The judicial workplace and the intersection with judicial independence".

The International Association of Judges in the XXIst century
(abstract from "History of the International Association of Judges")

Relationships of the IAJ with UN Institutions
(abstract from "History of the International Association of Judges")

Chronology of admissions to the IAJ
(abstract from "Chronology of admissions of IAJ")

List of the IAJ Presidents
(abstract from "List of the IAJ Presidents")

List of the IAJ Vice-Presidents
(abstract from "IAJ Vice Presidents")

List of the IAJ Secretaries-General
(abstract from "List of the IAJ Secretaries-General")

## DOCUMENTS REFERRING TO THE FOUNDATION OF THE IAJ IN 1953

(documents available at the following web page: https://www.iaj-uim.org/history/)

The Foundation of the IAJ in 1953 (H. Broell)
See the place in Salzburg where the statutes were signed
Vers une association internationale de magistrats (document in French)
Naissance d'une Association Internationale de Magistrats (document in French)
Message de M. Auriol, Président de la République Française en 1953 (document in French)
The first Statute (Italian)
The first minutes (Italian)
Oesterreichische Nachrichtenblatt – 1953 (document in German)

## THE FIRST 25 YEARS

(documents available at the following web page: https://www.iaj-uim.org/history/)

Chronologie de l'UIM (E. Meriggiola)
Souvenir de M. P. Pascalino, Premier Secretaire Général (G.E. Longo)
Le juge dans la nouvelle société (A. De Mattia)
La réunion de Rio de Janeiro et Brasilia (1971)
La Charte de Brasilia (1971)

**Please visit the website *International Association of Judge* for more information.**

# CELEBRATING SPEECH OF IAJ PRESENT PRESIDENT, VICE-PRESIDENTS, SECRETARY-GENERAL AND GENERAL SECRETARIAT

**José Igreja Matos**
*President*
*of the International Association of Judges*

## COMMEMORATIVE ADDRESS ON THE 70TH ANNIVERSARY OF THE FOUNDATION OF THE INTERNATIONAL ASSOCIATION OF JUDGES (IAJ)

70 years!

Heritor of the renewed hopes and aspirations brought by the end of II World War, the International Association of Judges was created in a special period aimed to a peaceful future.

Nations were in ruins, and the world wanted peace. Representatives of dozens of countries created a new international organization, the United Nations.

Never again! Humankind was determined to build a world where wars, mass destruction, totalitarian regimes were finally eradicated.

In 1948, The Universal Charter of Human Rights paved the way – "All human beings
are born free and equal in dignity and rights."

It was the right time for the judges to agree on an international organization devoted to the Rule of Law.

Already, in Venice, in October 1952, enlarged discussions took place about the possibility of an international cooperation of judges. In May 1953, in an international meeting of judges held in Rouen, an agreement in all essential points was achieved; the Austrian delegation agreed on behalf of the Association of Austrian Judges to prepare the meeting of foundation.

4 to 6 September 1953. Salzburg, Austria.

The International Association of Judges (IAJ) was created by associations of six countries: Brazil, Germany, France, Italy, Luxemburg and Austria.

Judges from Belgium, Ireland and the Saarland participated as observers.

The opening ceremony was celebrated on 4 September by the President of the Austrian Association, Karl Wahle, in Knight's Hall of Salzburg Residency. Mr. Wahle expressed his enthusiasm that judges of free countries have started to associate in a global organization. He then proclaimed: without independent judges no democracy can exist.

Following, the first meeting of the Central Council, Ernesto Battaglini (Italy) was elected president of the association, vice-presidents became Edgard Costa (Brazil), Otto.

Konrad (Germany), Jean Reliquet (France) and Karl Wahle (Austria). Pietro Pascalino (Italy) was elected Secretary General, his Deputy became Domenico Di Gennaro (Italy).

On September 6 in the closing meeting of the delegates the statute of foundation, still largely applicable, was signed.



Two basilar principles of our organization were definitively recognized. Proactively to define as our mission the safeguard of "the independence of the judicial authority, as an essential requirement of the judicial function and guarantee of human rights and freedom" (article 3) and in a restricted manner to impose that "the association does not have any political or trade-union character" (article 2).

The prolonged path during the many decades of our existence cannot be described briefly here.

A special achievement, and others exist, should be mentioned. The Universal Charter of the Judge, adopted by the IAJ Central Council in Taiwan – its association is consistently involved on our history - on November 17th, 1999, updated in Santiago de Chile on November 14th, 2017; a fundamental document for judiciaries worldwide.

Article 1 defines Judicial independence: *"The independence of the judge is indispensable to impartial justice under the law. It is indivisible. It is not a prerogative or a privilege bestowed for the personal interest of judges, but it is provided for the Rule of law and the interest of any person asking and waiting for an impartial justice. All institutions and authorities, whether national or international, must respect, protect and defend that independence."*

Today, in 2023, a special tribute is well deserved to all of those that worked to reach the present remarkable moment: the International Association of Judges has now associations of judges or similar bodies from 94 countries; by large, we are the most representative organization of the judiciary in the world.

Recently, in September 2022, judges from 71 countries assembled, in person, at our last world meeting: the biggest event of IAJ ever. As pointed out by the "Jerusalem Post", our 64th General Assembly was marked as the largest global gathering of foreign officials in Israel since 1995.

The conference produced several key moments in the context of the discussions maintained by the General Assembly, the Regional Groups or the Study Commissions. The large panel at the entrance of the Knesset welcoming the IAJ delegates is one of the expressive examples of the prominence attributed to the judges and to our international organization.

But let me underline one of those outstanding instants: the ceremony of the delivery of the "Judicial Independence Awards" to Murat Arslan, Erika Aifan and Krystian Markiewicz.

All delegates from all continents expressed their recognition towards those brave defenders of judicial independence, in their respective countries. In particular, when Honorary President Christophe Régnard took the floor and received the award ascribed to Murat Arslan, still suffering in prison for his courageous commitment to the Rule of Law, we all personally felt the symbolic importance of this exceptional moment.

The solidarity with the ordeal of Turkish judges is a pivotal example on how IAJ provides a unique collective environment where unforgettable individual experiences may take place.

One last thought, to share my own personal relation with IAJ. Obviously, I feel an immense pride and joy for being involved in this seventy years of history, in the very heart of the battle to uphold Rule of Law and to protect human rights. But perhaps it would be more interesting, especially for the younger generations of judges, less familiar with our activities, to focus on the influence of IAJ in my personal life, as a human being, sharing two enlightening episodes.

The first happened in Campeche, Mexico, in my first presence at a IAJ's meeting, a last minute replacement of a colleague.

During those few days, I learned one of the more decisive reasons that make unique our organization.

The companionship among judges of different cultures, languages, traditions. The comradery, the sense of belonging, the solidarity among ourselves, the togetherness was a binding sentiment born then and powerfully amplified in the following years.

To oppose to the solitude of our profession we all need the constant, solid, unbinding bonds built within IAJ.

The second moment was the 1000 Robes March, January 11th 2020, in Warsaw, Poland. A day that marked historically the fight for judicial independence and would be remembered for decades to come. Judges of dozens

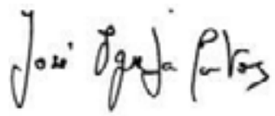
of countries united with thousands of Polish citizens, all determined to defend the Rule of Law.

During the march, an old lady, tears in her eyes, approached me. Thank you, thank you, she said to this foreign and anonymous judge. She then engaged in a dialogue with me in the universal language of human connection, of warmth and kindness; we embrace ourselves and move along among the crowd.

This epiphanic instant outlines my personal commitment as president of IAJ.

Our mission defending the decisive value of judicial independence will always be judged through the lucid, clear and moist eyes of this nameless old lady.

In her name, in the name of the people we serve, I am confident that for the next 70 years IAJ will continue to be decisive for the affirmation of Rule of Law.



**José Igreja Matos**
*President of the IAJ*





**Đuro Sessa**
*First Vice-President*
*of the International Association of Judges*

## COMMEMORATIVE ADDRESS ON THE 70TH ANNIVERSARY OF THE FOUNDATION OF THE INTERNATIONAL ASSOCIATION OF JUDGES (IAJ)

When I entered the big family of International Association of Judges and it's Reginal Group European Association of Judges I could never imagine that I will be called and in opportunity to write this address in the occasion of 70 years of our Association.

Seventy years of existence is sensation by its own, without taking in account all activities, efforts and goals IAJ achieved in this past years relaying on its own forces on volunteer work of so many fine, dedicated and capable colleagues who generously devoted their time for the common good.

My "parallel life" with the world of judges' associations started in beginning of Nineties when democracy entered post-communist countries and when it was possible to form associations of judges, association of holders of third independent and autonomous state power.

So I was one of several judges who initiated and established Association of Croatian Judges, association which still to this day exist as only judges' association in the Country.

Our struggle to come to international arena, was rather long in the nowadays IAJ standards mainly caused by war against Croatia and some deficiencies in regard to real position of judiciary in the State.

But finally our application was accepted and my Association was admitted to IAJ in 2000 at the IAJ Meetnig in Recife.

This moment, when at that time president of Association judge Vladmir Gredelj and I as vice-president and so called "minister for foreign relations" entered the conference room followed with applause of all delegates is unforgettable flow emotions, honour and satisfaction.

Only colleagues who passed same path and had opportunity to experience such moment can truly understand what I am speaking about.

From that time to this very moment I was firstly listening, then took part in discussions and our decisions and step by step came to the faze to write this address as president of EAJ and First Vice-President of IAJ.

I have to admit that after my Association become member of IAJ authorities in my country took many steps interfere with principles of independence of judges which forced us, and me as representative to IAJ to explain the circumstances and to seek help, advice and actions from EAJ and IAJ.

We learned from the best and we enjoyed support and advice through many meetings, statements and documents which supported our struggle for independence of judges and their acknowledgment from other state powers.

Learning from my own experience, and that is hardest way to learn, essence of IAJ is just that, solidarity and support to our colleagues and our member Associations around the World based on same principles, same common values and same understanding that rule of law is air and earth for every and each judge and that without it our role is unimaginable in modern democracies.

As one famous Croatian poet and dissident and politician Vlado Gotovac wrote in his poem:

"About the same, always the same"

European Association of Judges as part of IAJ is following this policies all the time, and I hope that all our member Associations, 44 of them from Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Hercegovina, Cyprus, Czechia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Moldova, Montenegro, Netherlands, Norway, Poland,

Portugal, Republic of north Macedonia, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine to United Kingdom see that, understand that and do to their best abilities to contribute to authority of our Association.

There are many reasons to be serious, responsible and cautious in the years before us.

Three last years have been like no other in our recent memory.

While the COVID – 19 pandemic is first and foremost a public health crisis, we as IAJ have not lost sight of related challenges that are consequential for containing this threat and for promoting a rapid and sustainable recovery.

The struggle to uphold the rule of law was one of them.

For example there are some states misused emergency powers to consolidate executive authority at the expense of the rule of law, suppressing and undermining democratic institutions, especially where courts and other oversight bodies struggle to perform due to COVID-related restrictions.

The distribution of different forms of emergency aid, was fertile ground for corruption and without effective justice system, where again judges are in the centre of it, independent judges had indispensable role to ensure transparency, accountability and oversight, much of it will not reach intended beneficiaries.

From time to time, every nation has an emergency of one kind or another to face. It tests all aspects of that nation -- the people, the facilities, the finances -- and very occasionally it also tests a commitment to the Rule of Law.

Let us remember and never forget that the Rule of Law is the crucial building block for any society to be stable and prosper.

Second crisis, lasting aggression and war against Ukraine brings me to revoke descending opinion of justice Lord Atkin in the case:, Liversidge v Anderson [1942]

In a speech that should serve as a lesson to us all he said, "…Amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace."

But, like it or not, we have war in the middle of Europe, aggression to sovereign and free state goes before our eyes and we can see how rule of law , values cherished and protected in Europe are falling apart.

Judges, courts and court administration have to answer to the challenges how to ensure proper functioning of courts and how to ensure protections of citizens' rights, at least those which cannot be postponed.

And who is in centre of this endeavour- judges who took leading role in stopping tendencies to frame human rights using crisis as excuse.

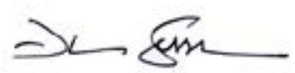
We are also facing that in many Countries, which to be honest some years ago we could not imagine that developments will go in that direction and that States and judiciaries which have been lighthouses for many European judiciaries are now taking huge steps back in insuring guarantees of independence of judges.

That is warning to IAJ that nothing is for grated and that changes can come over night from the parts of the World which we could expect less.

Other two powers are trying, and unfortunately succeeding to depart from standards which are tools and means to ensure independent and impartial judge, what is water and air for independent judiciary. This could be seen as continuous third crisis we are facing.

This practice is sometimes praised from the ordinary citizens. This is for judges' associations challenge by itself. Our Member Associations are sometimes alone in efforts to send a proper message to the general public and they are very often alone in this struggle, so our solidarity and support is essential.

Allow me to repeat and stress again that to main role of IAJ is and will be to facilitate this solidarity in next seventy years of IAJ existence.



**Đuro Sessa**
*First Vice-President of the IAJ*

**Walter Barone**
*President of the IBA Group of IAJ*

## COMMEMORATIVE ADDRESS ON THE 70TH ANNIVERSARY OF THE FOUNDATION OF THE INTERNATIONAL ASSOCIATION OF JUDGES (IAJ)

It is with great joy that we celebrate the 70th anniversary of the foundation of the International Association of Judges and its success story! I am very proud that Brazil was one of the founders of the IAJ in 1953, alongside Germany, France, Italy, Luxembourg, and Austria.

My first contact with the IAJ was through the excellent work done by my friend Justice Sidnei Beneti, who had a fruitful career at the IAJ and became its President in 2004. In the various roles I played within the structure of the IAJ, I always learned a lot. For several years, I audited the entity's accountability, and in that capacity, I was able to verify the professionalism of the IAJ secretariat, keeping the association's bookkeeping perfectly organized and documented in accordance with accounting rules.

On the other hand, during my work on the first study commission, of which I was chairman, I was able to witness the richness of the legal discussions that annually take place within the scope of the study commissions. In this regard, it is worth highlighting the topic that was discussed by the first study commission in 2021 - "ACCESS TO JUSTICE DURING THE COVID-19 PANDEMIC" - when the Herculean effort undertaken by colleagues from a number of countries to keep justice functioning and available to citizens even in a period of global health crisis was well demonstrated.

As President of the Iberoamerican Group of the IAJ, I have witnessed the difficulties faced by Iberoamerican colleagues, especially those from Latin American countries, in exercising the jurisdictional function independently. Unfortunately, there are still many countries in the region where, in practice, the division of powers is not real and effective, and in addition, where there are powerful groups that try to interfere in judicial decisions that do not suit them, using threats and persecution against judges. Moreover, there are cases of physical attacks on judges themselves, and sometimes those attacks are fatal.

In this context, I have seen how indispensable and decisive the work of the IAJ is in defense of judicial independence and of colleagues who are persecuted for acting independently and impartially. In fact, I will never forget this sentence that a dear colleague from Guatemala once said to me: 'The work of the IAJ, through the IBA Group, has already saved lives among colleagues in my country. We are truly grateful for your support!'

Finally, I cannot fail to mention the extraordinary project in which the IAJ participated to rescue Afghan female judges who were being threatened by the new regime in their country. Through this project, those Afghan colleagues were able to find refuge in several countries, including Brazil, where they could start a new life with their families in safety and freedom.

The last 70 years have been very productive, and we look forward to the next 70! Happy anniversary, IAJ!

**Walter Barone**
*Vice President, President of IBA*

**Allyson K. Duncan**
*President, ANAO (Asia, Australia, North America and Oceania)*

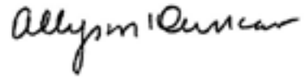
## COMMEMORATIVE ADDRESS ON THE 70TH ANNIVERSARY OF THE FOUNDING OF THE INTERNATIONAL ASSOCIATION OF JUDGES (IAJ)

The history of the founding of the International Association of Judges (IAJ) in the aftermath of World War II is one of virtually unprecedented achievement. Nations emerging from the global trauma of World War II came together to pursue the common goal of dedicating themselves to the pursuit of the Rule of Law, in contrast to Law by Rule. The IAJ is the brainchild of that effort, and its aspirations continue to be realized.

The Federal Judges Association of the United States was a relative newcomer to the IAJ, having joined in the mid-1990s. I had read about the association in Louise Mailhot's 2008 History, with its wonderful foreword by Sidnei Beneti. But my first attendance at a meeting was at the IAJ Annual Convention in 2010 in Senegal. The trip to Dakar was a profoundly moving one, including, as it did, an excursion to Gorée Island. One of the earliest and most prominent hubs of the slave trade, the island is now a UNESCO World Heritage Side. It is also a profoundly moving symbol of what the Rule of Law and its companion principle, Judicial Independence, stand for: the bulwark of fundamental human rights and freedoms against encroachment by arbitrary power, and the protection of the judiciary as its preserver.

In my time with the IAJ and particularly as President of ANAO, I am proud to have been a part of efforts to stand for the principles we espouse: We spoke out promptly, for example, to support our colleagues in the Solomon Islands, Sri Lanka, and Yemen. And our President, Jose Igreja Matos, joined with the President of the International Association of Women Judges to condemn the violence against judges, and particularly women judges, in Afghanistan.

As the representative of the judicial associations in more than ninety countries, ours is powerful voice when raised in support and concern on issues of judicial independence. Perhaps more effectively than any other organization, we can shine a spotlight on injustice and the plight our colleagues face when they stand against it. Much work remains to be done, but the IAJ is uniquely constituted to address it.



**Allyson Duncan**
*Vice President, President of ANAO*



**Madame Marcelle KOUASSI**
*Présidente du Groupe Régional Africain*

## MESSAGE À L'OCCASION DU 70È ANNIVERSAIRE DE L'UNION INTERNATIONALE DES MAGISTRATS (UIM)

L'Union Internationale des Magistrats est âgée de 70 ans. Eh oui, que d'années parcourues ! Mais combien de Magistrats dans le monde connaissent-ils son existence ?

La question peut paraître curieuse et pourtant, elle peut refléter une réalité.

En effet, dès ma première prise de fonction en 1993, en qualité de Magistrat au parquet d'Abidjan, j'ai adhéré à l'Union Nationale des Magistrats de Côte d'Ivoire (UNAMACI) qui est membre de l'UIM depuis 1976. Cependant, j'ignorais l'existence de l'UIM jusqu'à ce que je découvre un courrier (lettre dans une enveloppe aux initiales de l'UIM) adressé à l'UNAMACI, dans le bureau du Procureur Adjoint qui en était le président. Celui-ci m'a alors brièvement parlé de l'Union Internationale des Magistrats pour satisfaire ma curiosité, sans toutefois dire un mot sur le Groupe Africain de l'Union.

Je l'ai compris plus tard ; en fait, le Groupe Africain n'a commencé à exister qu'à partir de l'année 1993 où il a tenu sa première réunion à Sao Paulo (Brésil). Aucun magistrat africain n'étant membre du Comité de la Présidence, le premier Président du Groupe Africain a été Monsieur Marcus Aarola, originaire de la Finlande. La deuxième réunion du Groupe a eu lieu en 1994 à Athènes (Grèce).

L'année suivante, le Groupe Africain a tenu, le 10 septembre 1995 à Tunis, sa première réunion en terre africaine. Au cours de celle-ci, les participants ont doté le Groupe Africain d'un Statut du Juge en Afrique pour affirmer l'attachement des juges de différents États africains, à la séparation des pouvoirs, exécutif, législatif et judiciaire, gage de l'État de droit, qui doit être insérée dans les Constitutions ou lois fondamentales, pour souligner l'indépendance du juge, la nécessité d'un statut particulier pour régir le juge dans l'exercice de sa fonction, la promotion des relations d'amitié et de coopération entre les Magistrats etc. Ils ont élu en la personne de Monsieur Tarek BENNOUR, de nationalité tunisienne, le premier Président africain du Groupe.

Depuis cette date, le Groupe Régional Africain s'est régulièrement réuni sur le territoire africain, traitant divers thèmes et discutant de problèmes particuliers sérieux concernant des magistrats ou l'indépendance de la justice dans certains pays, en vue d'adopter des résolutions et des conduites à tenir. D'autres réunions du Groupe Régional Africain se sont tenues dans des pays en dehors du continent africain, à l'occasion des réunions de l'Union Internationale des Magistrats.

Ainsi, depuis sa création à Sao Paolo (Brésil) en 1993, les réunions du Groupe Africain en terre africaine ont eu lieu dans divers pays :

Tunis (Tunisie) 1995
Abidjan (Côte d'Ivoire) 1998
Dakar (Sénégal) 1999
Bamako (Mali) 2000
Lomé (Togo) 2001
Marrakech (Maroc) 2002
Johannesburg (Afrique du Sud) 2003
Ouagadougou (Burkina Faso) 2004
Niamey (Niger) 2005
Yaoundé (Cameroun) 2006
Abidjan (Côte d'Ivoire) 2007
Casablanca (Maroc) 2008
Alger (Algérie) 2009
Cotonou (Benin) 2010
Bamako (Mali) 2011
Maputo (Mozambique) 2012
Cape Town (Afrique du Sud) 2013
Niamey (Niger) 2014
Alger (Algérie) 2015
Kinshasa (République Démocratique du Congo) 2016
Maputo (Mozambique) 2017
Alger (Algérie) 2018
Le Cap (Afrique du Sud) 2019
2020 par visioconférence
2021 par visioconférence
Tunis (Tunisie) 2022
Bamako (Mali) 2023

Le Groupe Régional Africain, à travers les délégués des différents pays, participe aux différentes commissions d'étude lors des réunions de l'UIM. C'est le lieu de relever que l'un des délégués du Groupe, en l'occurrence M. Mamadou Mansour SY (décédé) a contribué, en 1994 à Athènes, à la création de la quatrième commission d'étude et en a été le président pendant longtemps.

Pour mémoire, il importe de rappeler les différents présidents qui se sont succédés à la tête du Groupe :

- 1993-1995 : M. Marcus Aarola (Finlande)
- 1995-2000 : M. Tarek BENNOUR (Tunisie)
- 2000-2004 : M. Mamadou Mansour SY (Sénégal), décédé le 17 août 2010
- 2004-2010 : Mme Fatoumata DIAKITE (Côte d'Ivoire)
- 2010-2016 : M. Musi CAGNEY (Afrique du Sud)
- 2016-2021 : M. Djamel AÏDOUNI (Algérie)
- 2021 à ce jour : Mme Marcelle KOUASSI (Côte d'Ivoire)

Le Groupe Régional Africain a eu l'honneur de diriger l'Union Internationale des Magistrats (UIM), à travers Madame Fatoumata DIAKITE qui en a été la Présidente de 2010 à 2012.

L'UIM, qui a débuté avec très peu de pays, compte 70 ans après sa création 94 associations. Eh bien, le Groupe Régional Africain a contribué à l'augmentation de ce nombre puisqu'il a grandi et totalise à ce jour 20 associations, même s'il faut souligner qu'il en a perdu deux (celles du Cameroun et du Burkina Faso). Mais, il est sur le point d'accueillir à nouveau en son sein le Burkina Faso, à travers une autre association.

Les vingt (20) pays dont les associations composent le Groupe sont : Afrique du Sud, Algérie, Angola, Bénin, Côte d'Ivoire, Égypte, Gabon, Guinée, Guinée Bissau, Libéria, Mali, Maroc, Mauritanie, Mozambique, Niger, République Démocratique du Congo, Sao Tomé E Principe, Sénégal, Togo, Tunisie.

La vie du Groupe Régional Africain n'a pas toujours été comme un fleuve tranquille. Elle est beaucoup secouée ces derniers temps par de graves atteintes au principe de la séparation des pouvoirs, à l'indépendance de la justice, parfois à la carrière et à la sécurité des Magistrats, dans certains pays membres. Mais nous ne devons pas baisser les bras dans cette quête perpétuelle de l'indépendance du pouvoir judiciaire. C'est en étant nombreux, dans l'union, et solidaires que nous pouvons sortir vainqueurs de nos luttes pacifiques.

Je peux dire que l'Union Internationale des Magistrats, malgré les difficultés, a encore de beaux jours devant elle.

JOYEUX ANNIVERSAIRE

**Marcelle Kouassi**
*Vice President, President of AFR*





**Giacomo OBERTO**
*Secretary-General*
*of the International Association of Judges*

## COMMEMORATIVE ADDRESS ON THE OCCASION OF THE 70TH ANNIVERSARY OF THE FOUNDATION OF THE INTERNATIONAL ASSOCIATION OF JUDGES (IAJ)

My first contacts with the IAJ date back to the year 1985, when I was chosen by the Italian Association of Judges to represent my Country in the Oslo meeting of the Central Council (CC). In those times the IAJ was composed of no more than 30 associations and I remember that, on that particular occasion, the meeting of the CC consisted of about 35 people, all sitting around a single, large, oval table in the Oslo city hall. The IAJ was basically a place in which a few judges, mainly white, male and very, very old Europeans, used to meet no more than once a year to discuss the subjects chosen by the (at that time only) three study commissions. The exchanges in preparation of the meetings were made by ordinary mail and my work as assistant at the Secretary General (SG) consisted mainly in making photocopies, putting them in envelopes and licking hundreds and hundreds of stamps (I still have in mind their unpleasant taste!).

Things changed dramatically after the fall of the Berlin wall, with the accession of many of the countries which had been part of the former communist bloc. Actually, in the early and mid-nineties of the last century, the IAJ started to deal with concrete, serious and unprecedented problems affecting all of the thinkable (and unthinkable!) issues of judicial independence. This was due to several reasons. Mainly, to the fact that those systems were emerging from decades of dictatorship and discovering for the first time the principles of the Rule of Law.

Beside this, let me say that before the Council of Europe intervened (as always too late…) this dramatic passage from dictatorship to democracy had been influenced by Common Law (mainly American) experts, who thought that a plain and "brutal" transfusion of Common Law rules—with no adaptation to the European reality, cultures, and traditions—was the solution of the problem. Hence, rules such as the appointment of judges by the Executive (or under a strong influence by the political power), the submission to the Executive of all relevant decisions on the career and discipline of judges, the lack of a really representative Council for the Judiciary, the strong "pyramidalization" of the whole judicial system, etc., were thought acceptable and "modern".

However, such principles, which may function—more or less properly—in the Anglo-Saxon cultures, were introduced into legal environments which were not suited to receiving them. In particular, these new realities were lacking the centuries-old respect for the Judiciary that existed in Common Law legal systems. These Countries were, rather, accustomed to practices like the infamous and very well known "telephone jurisprudence", typical of the Warsaw Pact judiciaries, where cases were adjudicated by judges on the basis of directives given to them on the phone by leaders of the Communist Party. Furthermore, in these so-called "new democracies", those Common Law principles were not adequately counter-balanced by the guarantees which, on the other side of the Channel or of the Atlantic Ocean, give to judges extensive powers (we need only think of "Contempt of Court"), allowing judges to defend by themselves their own position and independence.

So, anyone can easily imagine the enormous size of the unprecedented problems we had to face by the increase in the number of associations from different counties joining the IAJ. The first solution the IAJ found was to create four Regional Groups, from an idea of the then IAJ SG Justice Massimo Bonomo. Actually, we understood immediately that these were the right "arenas" to discuss these new kinds of problems. Therefore, we started to debate concrete issues pertaining judicial independence by studying creating commissions, issuing recommendations, letters, resolutions, etc. and trying to act by contact with other organisations and international bodies. We intensified our contacts with the U.N. (and in particular, since it was created, in 1994, with the Office of the Special Rapporteur on the independence of Judges and Lawyers), Council of Europe, E.U., etc. In the

meantime, the number of IAJ member associations was constantly growing, posing new types of challenges: let us think, just to give an example, of the difficulty of organising meetings of 300-400 people!

But this is not the end of the story (and of our troubles!).

In the last six or seven years the IAJ had to face other absolutely unprecedented kinds of challenges: maybe the hardest ones. They started with the very well known tragedy in Turkey, where we had to realise immediately that our "usual" strategy, consisting in issuing resolutions and recommendations, sending letters to international bodies (United Nations, Council of Europe, European Union, etc.), sending delegations to the spot, tasking independent observers in trials against colleagues, and so on, had to be complemented with something new. We understood that we had to do much more. So, the IAJ decided, in 2016, to create a special fund for assistance to judges and prosecutors—as well as their families—who are victims of their regime's persecutions. Here too, without dwelling on aspects that are, as you can very well imagine, confidential, it can be said that up to now the IAJ has paid out sums (donated by judges, judicial associations and judicial bodies from all over the world) of a total amount of about € 245,000.00, intended to help the families of Turkish judges and prosecutors who were persecuted by the regime, deprived of their functions and often imprisoned. A Committee, specially constituted within the European Group of the IAJ, examines the requests for support and approves the disbursement, through a network that operates in a confidential way, but in constant contact with the IAJ.

But this is not enough.

Over the past few years, the number of countries that have begun showing serious problems in relation to the issue of judicial independence has only increased, even exponentially. It will be enough to mention, among the most recent cases, the persistently worrying situation of Poland, in relation to which the IAJ launched, in agreement with the local association IUSTITIA, a specific and very intense number of initiatives, before and after the highly publicised "March of the 1000 robes," which on January 19th 2020 gathered a large number of judges, from every European country, in the streets of Warsaw, to demonstrate their solidarity with their Polish colleagues and their concern for the demolition of the Rule of Law in that country. More recently, the IAJ and its European Regional Group have launched the unprecedented initiative of lodging a lawsuit with the Court of Justice of the EU over the decision of the EU Council to unblock Recovery and Resilience Funds to Poland. Actually, we argued that the conditions imposed by the EU on Poland fell short of what is required to ensure effective protection of the independence of judges and the judiciary and of the disregard the judgments of the CJEU on matters in suit.

Turkey, Poland and Guatemala have been at the focus of IAJ's attention as well during the 2022 meeting in Tel Aviv, during the closing ceremony, where three judges from those countries (Murat Arslan, founder of the Turkish association YARSAV, Krystian Markiewicz, President of the Polish association Iustitia and Erika Aifan, persecuted judge of Guatemala) were awarded the IAJ judicial independence prize.

Furthermore, the humanitarian emergency facing judges in Turkey has in some way repeated itself, albeit in different (and in some ways even more dramatic) forms, in Afghanistan, where the IAJ has been called to cooperate in a rescue operation of "physically" transferring hundreds of female and male judges and prosecutors out of the country, in a very complex international context, which has required and still requires unprecedented forms of collaboration with governments of different countries in order to coordinate this commendable activity. All this was followed, shortly after, by the brutal Russian invasion of Ukraine and the subsequent humanitarian catastrophe, which, for obvious reasons, could not fail also to affect the judiciary, all the more in a country whose association of judges has been a very active member of the IAJ since 2004.

As you can very well understand, the real storms that have hit judges and prosecutors in various parts of the world in recent years have in some way reshaped the traditional vision of international exchanges between judges. The real "trial by fire," through which advocates of the need for an effective separation of state powers have passed and continue to pass in these demanding times has greatly contributed to shaping new forms of cross-border judicial associations. We have been therefore forced to rethink and reorganize our activity. All this, in a context in which the pandemic that has afflicted the whole of humanity for well over three years seems to want to erase the very reason for associations. The concept of an association, by definition, rests on the idea of reuniting people, first and foremost, physically. In contrast, the pale technical surrogates we used in this prolonged period—as a form of virtual and even slightly shabby Ersatz of a way of meeting that had lasted for millennia—generates curious rejection effects on participants.

Indeed, on closer inspection, this icy wind of repression against the principle of separation of powers has deep historical causes and finds further nourishment in these times precisely first in the social, economic and legal consequences of the pandemic, and secondly in the war on Ukraine. The general climate of intimidation and fear for the very physical integrity of citizens naturally strengthens the powers of the executive, and this at the expense of judicial independence. All this, then, in a general context in which, despite the expectations of many, the creation and development, in various European systems, of self-governing bodies (High Councils) of the judiciary à l'italienne, instead of supporting judges, seems, on the contrary, to frighten and intimidate them.

In this general context, already thirty years ago, between 1993 and 1995, the various regional components of the IAJ adopted Charters on the statute of the judge:

- the "Judges' Charter in Europe," adopted by the European Association of Judges – European Regional Group of the IAJ in 1993;
- the "Statute of the Ibero-American Judge" (Estatuto del Juez Iberoamericano), adopted in 1995 by the Ibero-American Group of the IAJ;
- the "Judges Statute in Africa," adopted in 1995 by the African Group of the IAJ.

A few years later, in 1999, after a long process of reflection, the Central Council of the IAJ, during its annual meeting, held in Taiwan, adopted a Universal Charter of the Judge, subsequently revised, integrated and updated in Santiago del Chile, in 2017.

Starting, therefore, from 1999 and since the adoption of the Universal Charter, the IAJ has conducted long and intense work on the minimum standards for guaranteeing the independence of the judiciary. In addition, the various Regional Groups and the Central Council of the IAJ have adopted numerous resolutions that refer to these standards, gradually creating, in this way, a corpus of specific rules for this organization. This, obviously, also in the wake of the approval, in the last few decades, of various international documents, many of which were promulgated under the aegis of the Council of Europe: from the European Charter on the Statute for Judges, launched in 1998, to the Recommendation N°. R 2010/12, to the various opinions of the Consultative Council of European Judges (CCJE) and the Magna Carta issued by that body in 2010, to the reports and works of the European Commission on the Efficiency of Justice (CEPEJ). All of these documents and such activities have witnessed an intense and decisive contribution offered by representatives of the IAJ.

Dear colleagues, this is just a short glimpse of the way the IAJ has changed in these years, adapting itself, while consistently growing up, to new needs of this complex contemporary world. As for the rest, I recommend that you visit our web site (https://iaj-uim.org) and our Regional Groups sites (https://eaj.iaj-uim.org/, https://iba.iaj-uim.org/, https://ag.iaj-uim.org/, https://anao.iaj- uim.org/), in particular keeping an eye on the "News & Events" section, as well as on the IAJ-UIM Newsletter, that we regularly publish twice a year.

Thanks for your kind attention.

**Giacomo Oberto**
*Secretary-General of the IAJ*

**Lucio Aschettino**

**Galileo D'Agostino**

**Raffaele Gargiulo**

*Deputy Secretaries General of the IAJ*

## COMMEMORATIVE ADDRESS ON THE 70TH ANNIVERSARY OF THE FOUNDATION OF THE INTERNATIONAL ASSOCIATION OF JUDGES (IAJ)

Our first contact with the IAJ dates back to 1997, when the General Secretary of the time, Massimo Bonomo - a person of extraordinary talents, to whom the IAJ owes a great deal - asked the colleagues working in Rome to collaborate with the Secretariat; the work at the IAJ headquarters (where they had their working tools which are now obsolete, such as fax, telephone and ordinary mail) was increasing due to the growth in the number of associations joining our organisation and the growth of the IAJ's tasks and its importance in the international context.

Lucio Aschettino joined later, in 2002, having had previous experience of participating in the IAJ as a delegate of the Italian National Association.

The IAJ immediately exerted an extraordinary bond on the members of the Secretariat because of the way it worked, the goals it pursued and the atmosphere of friendship and sharing that prevailed during the meetings.

We come from a well-established culture of associations, typical of the Italian National Association of Judges, which has always been committed to protecting the independence of judges, supporting the universal values of the Italian Constitution, and contrasting, even bitterly, any legislative initiative that contradicts these values.

The participation in the IAJ therefore seemed to all of us an extraordinary opportunity to contribute to spreading the values of the Independence of the Judiciary in every country, seen not as a privileged status but as a means to promote the values of equality and well-being of citizens, especially those who can be defined as 'the least', i.e. lacking the economic and cultural tools necessary to protect their rights and prerogatives, including through the guarantee of a fair trial, which is an indispensable condition for a state to be a state of law.

The protection of this principle, which constitutes the main objective (Art. 3 of the Statute) of the IAJ, has led our Association over these years to make its voice heard and to take initiatives whenever the independence of the Judiciary was questioned or threatened, acquiring over time a recognised authority in the international arena.

The independence of the judiciary is not only a goal but also our shared dream, that inspires all of us and induces us to be part of this large and authoritative group (we are more than ninety!), in which the daily struggle for the protection of the fundamental rights of all individuals is combined with concrete solidarity towards colleagues in difficulty, who are often forced to make great sacrifices or even suffer limitations of personal freedom in order to be able to uphold their/our principles.

We are aware of the importance of our commitment within the Association, which we can carry out thanks to the essential contribution of our extremely valuable collaborators Barbara, Daniela and Alessandra, and we are honoured to be able to collaborate with colleagues of undoubted value and exceptional virtue, thanking our Secretary General Giacomo Oberto, a person of rare intelligence, preparation and efficiency, who shares our battles and values with us every day.

Dear IAJ, after 70 years, your action is more and more necessary every day. We are proud to be part of this big family, bound around the values of the rule of law, solidarity, respect for human rights and friendship.

**Lucio Aschettino**
*Deputy Secretary General of the IAJ*

**Galileo D'Agostino**
*Deputy Secretary General and Treasurer of the IAJ*

**Raffaele Gargiulo**
*Deputy Secretary General of the IAJ*

**Ms Barbara SCOLART**
*Assistant to the Secretary General of the IAJ*

## COMMEMORATIVE ADDRESS ON THE 70TH ANNIVERSARY OF THE FOUNDATION OF THE INTERNATIONAL ASSOCIATION OF JUDGES (IAJ)

I started working at the General Secretariat in early 2001 as its first professional assistant. I am not saying this to set a record, but to point out that at that time there were no precedents, no practices to adapt to; it was a white board and both content and form of my job had to be set in a structure that, since its inception 48 years ago, had relied solely on the commitment and spare time of the judges and prosecutors who had worked there. It was a new millennium and the IAJ was growing rapidly, demanding more and more time. There was also the idea of modernising its influence internationally, for example through a dedicated website.

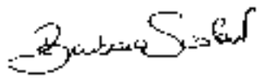
I met for the first time distinguished personalities, who, as a jurist, I greatly admired but had never encountered yet. These are people committed to the protection of a value, the independence of the judiciary regarded as the stronghold of an effective and impartial protection of human rights, which resonated with both my studies and with my passion for human rights.

In the General Secretariat, I found people who welcomed me with grace and warmth and with whom I have built everlasting bonds of trust, esteem and friendship. Was it easier because we are all Italians? Not really because it happened also with the members of the Presidency Committee, with some of whom I've established bonds that have survived their natural succession at the helm of the IAJ, as well as with the delegates from member associations.

I have learned to deal with issues I was not familiar with, e.g. accounting, the website and logistics; I have listened to important speeches on the rule of law and on the independence of the judiciary; I have travelled and met people from all over the world.

When I left the IAJ to begin my current job, I felt the wound of separation. I know the term might sound strong, but it is true that, although I had sought and chosen my new position and was happy and proud to begin a new job, it pained me to leave a world that had become precious to me and the people who had welcomed and valued me far more than my role might have suggested. I am grateful and honoured that the General Secretariat has acknowledged the strength of the bond that unites me to the IAJ and given me the opportunity to continue participating in its endeavours in a different form and role.

Happy anniversary IAJ!



**Barbara Scolart**
*Assistant to the Secretary General of the IAJ*

## LIST OF 94 NATIONAL ASSOCIATIONS MEMBERS OF IAJ

### MEMBER ASSOCIATIONS

LIST OF THE 94 NATIONAL ASSOCIATIONS OR REPRESENTATIVE GROUPS
MEMBERS OF THE INTERNATIONAL ASSOCIATION OF JUDGES IN 2023

- ALBANIA (Union of the Albania's Judges)
- ALGERIA (Syndicat National des Magistrats Algeriens)
- ANGOLA (Associaçao dos Juizes de Angola - AJA)
- ARGENTINA (Asociación de Magistrados y Funcionarios de la Justicia National)
- ARMENIA (Association of Judges of the Republic of Armenia)
- AUSTRALIA (Australian Judicial Officers Association)
- AUSTRIA (Vereinigung der Oesterreichischen Richterinnen und Richter)
- AZERBAIJAN (Social Union of the Judges of General Court of the Azerbaijan Republic)
- BELGIUM (Section Belge de l'Union Internationale des Magistrats - Internationale Unie van Magistraten-Belgische Afdeling)
- BENIN (Union Nationale des Magistrats du Bénin)
- BERMUDA (Judges of Bermuda)
- BOLIVIA (Associacion de Magistrados de Bolivia)
- BOSNIA and HERZEGOVINA (Udruženje Sudija u Bosni i Hercegovini)
- BRAZIL (Associaçao dos Magistrados Brasileiros)
- BULGARIA (Bulgarian Judges Association)
- CANADA (Canadian Superior Courts Judges Association)
- CHILE (Asociación National de Magistrados del Poder Judicial de Chile)
- COLOMBIA (Corporacion de Jueces y Magistrados de Colombia)
- COSTA RICA (Associacion Costarricense de la Judicatura)
- CROATIA (Udruga Hrvatskih Sudaca)
- CYPRUS (Énosi Dikastón Kýprou)
- CZECHIA (Soudcovská Unie Ceské Republiky)
- DEMOCRATIC REPUBLIC OF CONGO (Syndicat Autonome des Magistrats de la République Démocratique du Congo)
- DENMARK (Den Danske Dommerforening)
- DOMINICAN REPUBLIC (Asociación "Jueces Dominicanos para la Democracia" - JUDEMO)
- EAST TIMOR (Associação de Magistrados Judiciais de Timor-Leste - AMJTL)
- ECUADOR (Asociación Ecuatoriana de Magistrados y Jueces - AEMAJ)
- EGYPT (Egyptian Judges Club)
- EL SALVADOR (Asociacion de Magistrados y Jueces de El Salvador)
- ESTONIA (Eesti Kohtunike Ühing)
- FINLAND (Suomen tuomariliitto - Finlands domareförbund ry)
- FRANCE (Union Syndicale des Magistrats)
- GABON (Syndicat national des magistrats du Gabon - SYNAMAG)
- GEORGIA (Judges of Georgia)
- GERMANY (Deutscher Richterbund)

- GREECE (Énosi Dikastón kai Eisangeleon)
- GUATEMALA (Asociación Guatemalteca de Jueces por la Integridad)
- GUINEA (Association des Magistrats de Guinée)
- GUINEA BISSAU (Associação Sindical dos Magistrados Judiciais Guineenses - ASMAGUI)
- HUNGARY (Magyar Biroi Egyesület)
- ICELAND (Dómarafélag Íslands)
- IRAQ (Association of the Iraqi Judiciary)
- IRELAND (The Judges Association of Ireland)
- ISRAEL (The Israeli Association of Judges)
- ITALY (Associazione Nazionale Magistrati)
- IVORY COAST (Union Nationale des Magistrats de Côte d'Ivoire)
- JAPAN (Nihon Saibankan Kyokai)
- KAZAKHSTAN (Union of Judges of the Republic of Kazakhstan)
- LATVIA (Latvijas Tiesnesu Biedriba)
- LEBANON (Club des Magistrats du Liban)
- LIBERIA (National Association of Trial Judges of Liberia - NATJL)
- LIECHTENSTEIN (Vereinigung Liechtensteinischer Richter)
- LITHUANIA (Lietuvos Respublikos Teiseju Asociacija)
- LUXEMBOURG (Groupement des Magistrats Luxembourgeois)
- MALI (Syndicat Autonome de la Magistrature)
- MALTA (Assocjazzjoni ta' l-Imhallfin u tal-Magistrati ta' Malta)
- MAURITANIA (Club des Magistrats Mauritaniens)
- MEXICO (Comisión Nacional de Tribunales Superiores de Justicia de los Estados Unidos Mexicanos)
- MOLDOVA (Asociatia Judecatorilor din Moldova)
- MONGOLIA (Association of Judges of Mongolia)
- MONTENEGRO (Association of Judges of Montenegro-AJM)
- MOROCCO (Alwidadia Alhassania Lilkodate)
- MOZAMBIQUE (Associação Moçambicana de Juizes)
- NETHERLANDS (Nederlandse Vereniging voor Rechtspraak)
- NEW ZEALAND (Judges Association of New Zealand)
- NICARAGUA (Asociación de Jueces y Magistrados de Nicaragua)
- NIGER (Syndicat Autonome des Magistrats du Niger)
- NORWAY (Den Norske Dommerforening)
- PANAMA (Asociación Panameña de Magistrados e Jueces)
- PARAGUAY (Asociación de Magistrados Judiciales)
- PERU (Asociación Nacional de Magistrados)
- PHILIPPINES (The Metropolitan and City Court Judges Association of the Philippines - METCJAP)
- POLAND (Polish Judges Association - IUSTITIA)
- PORTUGAL (Associaçao Sindical dos Magistrados Judiciales Portugueses)
- PUERTO RICO (Asociacion Puertorriqueña de la Judicatura)
- REPUBLIC OF CHINA (TAIWAN) (The Judges Association of the Republic of China)
- REPUBLIC OF NORTH MACEDONIA (Zdruzenie na sudii na Republika Makedonija)
- ROMANIA (Association of Rumenian Judges)
- SAO TOME & PRINCIPE (Associação Sindical dos Juízes de São Tomé e Principe - ASSIMAJUS)
- SENEGAL (Union des Magistrats Senegalais)
- SERBIA (Društvo sudija Srbije)
- SLOVAKIA (Združenie sudcov Slovenska)
- SLOVENIA (Slovensko Sodnisko Drustvo)
- SOUTH AFRICA (Judicial Officers' Association of South Africa)
- SPAIN (Asociación Profesional de la Magistratura)
- SWEDEN (Sveiges Domareförbund)
- SWITZERLAND (Association Suisse des Magistrats de l'Ordre Judiciaire)
- TOGO (Association Professionnelle des Magistrats du Togo)
- TUNISIA (Association des Magistrats Tunisiens)
- TURKEY (Yargiçlar ve Savcilar Birliği)
- UKRAINE (Ukrainian Independent Judges Association)
- UNITED KINGDOM (The British Section of the International Association of Judges)
- URUGUAY (Asociación de Magistrados Judiciales)
- U.S.A. (Federal Judges Association)

## AIMS AND OBJECTIVES OF IAJ

The objects of the Association are as follows:

1. To safeguard the independence of the judicial authority, as an essential requirement of the judicial function and guarantee of human rights and freedom.
2. To safeguard the constitutional and moral standing of the judicial authority.
3. To increase and perfect the knowledge and the understanding of Judges by putting them in touch with Judges of other countries, and by enabling them to become familiar with the nature and functioning of foreign organizations, with foreign laws and, in particular, with how those laws operate in practice.
4. To study together judicial problems, whether these are of regional, national or universal interest, and to arrive at better solutions to them.

The Association does not have any political or trade-union character.

These objects are to be pursued by the following means:

1. By the organization of conferences and meetings of Study Commissions.
2. By the establishment of cultural relations.
3. By promoting and enhancing friendly relations between Judges of different countries.
4. By furthering mutual assistance between national associations and groups; by encouraging exchange of information and by facilitating professional and vacational visits by Judges to other countries.
5. In any other way approved by the Central Council.


## CONSTITUTION AND REGULATIONS OF IAJ

**Article 1**

1. The International Association of Judges is hereby established.

2. The seat of the Association is in Rome.

**Article 2**

The Association does not have any political or trade-union character.

**Article 3**

1. The objects of the Association are as follows:

(a) to safeguard the independence of the judicial authority, as an essential requirement of the judicial function and guarantee of human rights and freedom.

(b) to safeguard the constitutional and moral standing of the judicial authority.

(c) to increase and perfect the knowledge and the understanding of Judges by putting them in touch with Judges of other countries, and by enabling them to become familiar with the nature and functioning of foreign organizations, with foreign laws and, in particular, with how those laws operate in practice.

(d) to study together judicial problems, whether these are of regional, national or universal interest, and to arrive at better solutions to them.

2. These objects are to be pursued by the following means:

(a) by the organization of conferences and meetings of Study Commissions.

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(c) by promoting and enhancing friendly relations between Judges of different countries.

(d) by furthering mutual assistance between national associations and groups; by encouraging exchange of information and by facilitating professional and vacational visits by Judges to other countries.

(e) in any other way approved by the Central Council.

**Article 4**

1. The following are members of the Association:

(a) Those national associations which were, or whose provisional committees were, signatories to the Constitution on the 6th September 1953.

(b) Such national associations or national representative groups as the Central Council decides to admit to membership.

(c) Such regional associations representing judges where there are no such national associations as the Central Council decides to admit to membership.

2. All members must be apolitical and independent from executive and legislative powers.

3. All members must promote in their country or region the objects pursued by the International Association of Judges.

**Article 5**

1. A member loses its membership status if the Central Council determines that the member is not complying with the criteria for membership set out in Article 4(2) and (3).

2. If the payment of a member's subscription is in arrears of over three years, that member shall cease to belong to the Association unless the Central Council decides to the contrary.

**Article 6**

When a request is made, a member may be monitored and be required to submit a report on the situation of the judiciary in its country and the member's compliance with the criteria set out in Article 4 (2) and (3).

**Article 7**

1. The Central Council is the organ of the Association responsible for formulating policy. Every member is entitled to appoint one delegate to the Central Council, who may be assisted by a colleague.

2. Each member has one vote.

3. A member may authorize the delegate of another member to vote on its behalf at meetings of the Central Council. No more than two such authorizations can be given to the same member association.

4. No decision may be taken by the Central Council unless a majority of the members are present or represented. In exceptional circumstances the Presidency Committee may authorise a member to cast its vote either by registered letter or by e-mail. Votes cast by registered letter or by e-mail count towards the necessary majority quorum. Notwithstanding any other provision of this article, a decision may be taken by a majority of those who are present at a meeting of the Central Council conducted pursuant to Article 7, Para. 8

5. If the payment of a member's subscription is in arrears of over one year, that member shall lose its voting rights until the subscription arrears have been paid in full.

6. Decisions are taken by a majority vote save that a majority of two thirds of the votes cast is required for the admission and for the exclusion of any member. Abstentions will not be counted as a vote cast.

7. A meeting of the Central Council shall be convened by the President at least once every two years, except in situations of force majeure or where otherwise impossible. These meetings shall take place at the seats of the different members, preferably in rotation.

8. A meeting of the Central Council can also be organised by electronic means, when the Presidency Committee resolves that it is necessary to do so in situations of force majeure or where it is otherwise impossible to hold a regular meeting in person.

**Article 8**

1. The President represents the International Association of Judges and directs the Association. The President is assisted by six Vice-Presidents whom should be convened (if necessary, also by electronic means) at least once a year if possible, as the Presidency Committee.

2. One of the Vice-Presidents may be designated First Vice-President by a vote of the Central Council, after proposal by a Member.

3. In electing the President and the First Vice President the members of the Central Council shall consider the global diversity and unity of I.A.J. as well as the desirability of regional turnover.

4. The General Secretariat is the executive agency of the Association. It is situated in Rome. The Secretary General shall be assisted by one or more Deputy Secretaries General. After consultation of the Presidency Committee, the President appoints one of them as treasurer. The treasurer represents the IAJ in budgetary issues and in its relations to banks. He/she has the power to sign contracts with banks, to open and close bank accounts of the IAJ upon decision of the Presidency Committee.

5. The above officers shall be elected every other year by the Central Council. In case the Central Council could not be convened in an electoral year, due to a situation of force majeure or where otherwise impossible, such elections will take place during the next meeting of the Central Council. Until these elections, the above officers will continue in their offices. In the event that the impossibility of holding a meeting continues for a second year, the Presidency Committee may by unanimous vote decide to extend the prolongation for one further year but if its members are not unanimous there shall be elections by electronic means according to Article 7, Paragraph 8. There must be at least one Vice-President from each Regional Group. No Vice-President may be re-elected more than three times. The outgoing President will remain on the Presidency Committee for a further two years without voting rights.



6. The President of the Association can appoint for assistance a general representative from the Judges of the same country as the President to act as the President's personal assistant and to participate in all deliberations of the Association.

**Article 9**

General Regulations of the Association and its attachments shall be approved by the Central Council.

**Article 10**

1. The Central Council will fix the annual contribution which members are required to pay to the General Secretariat to meet the running costs of the Association.

2. The General Secretariat will present annual financial accounts to the Central Council. In any year in which the Central Council does not meet, these accounts shall be presented to the President.

3. The Secretary General and the Deputy Secretary General in charge of the finance have the signature on the accounts of the Union.

4. Current expenses are made by the Secretary General and the Deputy Secretary General in charge of the finance under the control of the President. Other expenses must be beforehand authorized by the President.

5. A Regional Group may fix an annual supplementary contribution.

**Article 11**

1. Members may establish Regional Groups within the framework of the International Association of Judges, if the Central Council does not oppose, in order to promote the objects of this Association, where this is best done in a regional context, and in order to promote regional cooperation in areas pertaining to the judiciaries of the member states, conforming to the principles and objects of the International Association of Judges.

2. The President of each Regional Group shall be a Vice-President who belongs to that Regional Group.

**Article 12**

1. The Constitution and Regulations may be amended by the Central Council upon the proposal of either the President or at least three members, submitted to the General Secretariat not less than three months before the meeting of the Central Council. Within one month of receipt of such a proposal, the General Secretariat must circulate it to all members of the Association.

2. In order to amend the Constitution there must be a vote in favour by majority of not less than two-thirds of the votes cast. Abstentions will not be counted as a vote cast.

3. In order to amend the Regulations there must be a vote in favour by the majority of the votes cast.

4. A member may authorize a delegate of another member to vote on its behalf. Article 7 point 3 applies.

5. Sub-amendments are inadmissible except when they represent a modification of a proposal. The Presidency Committee decides on the question of admissibility.

**Article 13**

1. This Constitution is adopted in five original texts: English, French, German, Italian and Spanish.

2. In the case of any difficulty of interpretation the French text shall prevail.

**Transitional Provision**

The transitional provision approved on the 6th September, 1953 is annulled.

**REGULATIONS UNDER THE CONSTITUTION**

**Article 1**
**Register of Members**

There shall be kept at the General Secretariat a register of members and an alphabetical card index or electronic file recording the date on which each member has joined and payments of annual subscriptions.

**Article 2**
**Central Council**

1. Notice of a meeting of the Central Council must be sent to members at least two months before the date of the meeting.

2. In the month following such notice, members may request the President to include any particular matter in the agenda. Where at least two members concur in making such a request, the President must comply with it.

3. The agenda must be circulated to members at least fifteen days before the meeting.

**Article 3**
**Voting**

1. The nominations of candidates seeking election as office holders must be presented in written form at the first session of the meeting of the Central Council during which the election is to take place. The nominations must include the names of the candidates, their membership to a national association or national representative group, member of the International Association of Judges (Article 2.2.ii of the Constitution), and the positions they are or were holding within their national judiciary and national association or group.

2. Every delegate must vote for as many candidates as there are posts available and include in the vote for the election of Vice-Presidents at least one candidate of each Regional Group. Ballot papers which do not comply with this rule shall be considered null and void.

3. The President may decide that the election of office holders be effected by secret ballot.

4. Whatsoever the subject matter of a vote, if at least three delegates so require, the vote shall be taken by secret ballot.

5. When the meeting of the Central Council is held according to the provision of Article 7, Paragraph 8, of the Constitution, the Presidency Committee, in consultation with the General Secretariat, shall decide the technical means by which the votes may be given in compliance with the principles set by this Article.

**Article 4**
**Contributions**

The amount of the annual subscription shall be fixed by the Central Council which, for this purpose, shall divide the members into four categories. The Central Council will also establish, on the proposal of the Presidency Committee, the percentage of the automatic increase of the contributions. This subscription must be paid to the General Secretariat before the 31st January of each year.

**Article 5**
**Rendering of accounts**

1. Accounts shall be rendered for the period between one meeting of the Central Council and the next. If the Central Council does not meet in the course of any year, the accounts shall be rendered, in accordance with art. 10 of the Constitution, to the President on the 31st December.

2. The accounts rendered shall include:

a) A balance sheet and a profit and loss account.

b) A certificate from the Bank at which the Association holds its funds stating the balance held on a date which must be less than one month before the meeting of the Central Committee or the 31st December, as the case may be.

c) Production of the ledger and all accounting documents.

3. The Central Council before it sits shall designate two delegates to scrutinize the annual accounts and to recommend whether or not they should be approved.

4. The Central Council shall, where appropriate, approve the accounts presented by the General Secretariat.

5. When the meeting of the Central Council is held according to the provision of Article 7, Paragraph 8, of the Constitution, technical rules on the rendering of accounts will be provided to the member Associations in advance by the Presidency Committee, in compliance with the principles set by this Article.



**Article 6**
**Delegation of Authority**

The delegations of authority provided for in Article 7 point 3 and Article 12 point 3 of the Constitution must be effected in writing.

**Article 7**
**Study Commissions**

1. Four Study Commissions are set up:

1st Commission: The organization of the Judiciary; the status of the judiciary; the rights of the individual.

2nd Commission: Civil law and procedure (comparative and international aspects of these).

3rd Commission: Criminal law and procedure (comparative and international aspects of these).

4th Commission: Public and social law (comparative and international aspects of these).

2. Each Study Commission shall be composed of one representative from each Association who will be nominated each year at the request of the General Secretariat. If an Association does not communicate names of new representatives, it will be understood that the current representatives continue in office.

3. The subjects to be studied shall be decided by the Central Council after the Chairperson of the Commission have been heard. The Central Council will fix the times and places of meetings.

4. Each Commission shall elect its Chairperson and two Vice-Chairpersons for two years. The Chairperson and the Vice Chairperson may be re-elected once. The election will take place at the end of the annual meeting. In case the Study Commission could not be convened in an electoral year for a situation of force majeure or where otherwise impossible, such elections will take place during the next meeting of the Commission. Until these elections, the above officers will continue in their offices. In the event that the impossibility of holding a meeting continues for a second year, the Presidency Committee may by unanimous vote decide to extend the prolongation for one further year but if its members are not unanimous there shall be elections by electronic means according to Article 7, Paragraph 8 of the Constitution.

5. The Chairperson will determine the working methods of the Commission and will prepare the questionnaire and the general report. The Chairperson may also decide to convene the respective Commissions by video link and organise webinars. The Chairperson may be assisted by a secretary whom the Chairperson may select at will from the Judges of the same Country. The Chairperson may communicate directly with the members of the Commission.

6. The Secretary General, if so requested by the Chairperson, is charged with coordinating the work of the members of the Study Commission, and particularly with the circulation of the Chairperson's questionnaire and the members' reports, and the translation of the reports into languages other than the original. The members' reports should include proposal for subjects to be studied in the future.

7. After the end of each session, the Chairpersons submit to the Secretary General copies of all reports and other documents, to be kept in the archives of the Association.

8. The Secretary General is charged with ensuring the widest possible distribution of final resolutions.

**Article 8**
**Correspondence**

1. Copies of all official letters must be sent to the President and to the Secretary General.

2. When the President or the Secretary General corresponds with a member, each will send copies of such correspondence to the other.

**Article 9**
**Permitted Languages**

1. Ordinary correspondence may be written by the President, the Secretary General and by each of the Associations, groups or committees belonging to the Association in their own National language.

2. The principal documents of the International Association of Judges must be drawn up in the

following five languages: English, French, German, Italian and Spanish. In case of doubt, unless otherwise provided, the French text shall prevail.

3. The working languages of the Association are English, French and Spanish for the Central Council, in cases where there is simultaneous translation. When there is no-simultaneous translation, the working languages are English and French.

**Article 10**
**Minutes**

The Minutes of the Central Council rank as principal documents.

**Article 11**
**Admission of New Members**

The following rules shall apply to the admission of new members:

1. Only one association or national representative group of each Country may be admitted to the International Association of Judges.

2. The Association or group applying must be representative of the judiciary of its Country. There is no requirement, however, that its membership should include any specified minimum percentage of the judiciary of the Country in question. Nor is there a requirement that the association or group should have a formal constitution.

3. The association or group applying must furnish proof that its activities and its principles accord with those of the International Association of Judges, as embodied in its Constitution.

4. In every case, before membership is granted, the Central Council must be satisfiedthat the association is independent from executive and legislative powers in its own country.

5. The achievement of judicial independence in the concerned country should not be considered a criterion for admission of members. However, in circumstances where judicial independence has not been achieved, the association must demonstrate that it is making concerted efforts to achieve judicial independence.

6. The fundamental procedural rules governing the admission of new members are determined by the Presidency Committee, adopted by the Central Council and attached to this Regulation.

**Article 12**
**Exclusion of members**

1. Members, who do not fulfil the criteria for membership in the International Association of Judges, can be excluded by a decision of the Central Council.

2. As soon as it has knowledge of the fact that a member does not fulfil the criteria, the Presidency Committee, after consultation with the concerned Regional Group, may appoint two rapporteurs to inquire into the situation.

3. The process for admission of a member shall, with the necessary changes, apply when the exclusion of a member is being considered by the Central Council.

4. The decision to exclude shall be made by the special majority of the Central Council with the qualified majority referred to in article 7 point 6 of the Constitution.

**Article 13**
**Monitoring (ad hoc and regular)**

1. At the request of the PC a member shall submit a report on the situation of the judiciary in its country and/or the compliance of the member with the criteria set out in Article 4 (2) and (3) of the Constitution (Ad Hoc Monitoring).

2. If a written request that raises specific concerns over the independence of the judiciary and includes the grounds of these concerns is submitted on behalf of at least 5 members of the IAJ or if it arises from the resolution adopted by a Regional Group, the Presidency Committee shall forward that request to the respective member association.

3. The requested report shall answer the questions which were raised in the request and shall refer to steps taken by the association, if any, to promote the aims and objectives of the IAJ and defend the internationally recognized principles of an independent judiciary.

4. Every year, and for first time in 2020, 1/3 of member associations have to answer a monitoring survey on the situation of their association and the judiciary of their country (Regular Monitoring). Members associations will be chosen by alphabetic order of the name of the country they belong to. The form and the content of questionnaire for the purpose of the monitoring survey will be determined by the Central Council. The monitoring procedure can be suspended by the Presidency Committee, when the Central Council cannot be convened due to situations of force majeure or where otherwise impossible.

5. Any report or survey under this article shall be submitted at least one month before the second meeting of the Presidency Committee that heads immediately before the meeting of the Central Council. It shall be distributed to all members.

6. Failure by a member association to submit a report, or monitoring survey without justification allows the Presidency Committee to proceed in the manner prescribed by Article 12 of the present Regulation.

7. To receive and analyze the monitoring survey reports required by Article 13 (4), a commission is established within the Central Council. This commission, chaired by one of the Vice-presidents of IAJ appointed by the Presidency Committee consists of 2 representatives of every Regional Group elected within these Groups. At the end of its work, the commission sends a written report to the Presidency Committee. This report is spread to all the member associations.

**Transitional provision**

1. After the adoption of the new Constitution and the general Regulation under the Constitution, extraordinary members will automatically become full members.

2. These associations will submit the report referred to in Article 6 of the Constitution and Article 13 paragraphs 1 to 6 of this Regulation within one year of the adoption of this Regulation. A rapporteur shall also be appointed by the Presidency Committee to prepare a report, within one year, regarding the fulfilment by each of these associations of the criteria of Article 4(2) and (3) of the Constitution and Article 11 of this Regulation. If any of these associations doesn't fulfil these criteria, the provisions of Article 5 of the Constitution and Article 12 of this Regulation apply.

3. As rapporteurs' reports have been provided with respect to the application of the extraordinary members currently seeking ordinary membership, the requirements of paragraph 2 above are dispensed with.

**ENCLOSURES**

Procedure to be Applied to Applications for Membership in the International Association of Judges (Article 11, Para. 6, of the Internal Regulation) and Questionnaire for a National Association of Judges Applying for Membership in the International Association of Judges

Questionnaire under Article 13 of the Regulations

Administration Fee for Applicant Associations (Article 11, Para. 6, of the Internal Regulation)

# UNIVERSAL CHARTER OF THE JUDGE

**Adopted by the IAJ Central Council in Taiwan on November 17th, 1999**
**[**Link to the 1999 Edition**]**
**Updated in Santiago de Chile on November 14th, 2017 [**Presentation of the New Universal Charter**]**

## INTRODUCTION

"There is no freedom if the power to judge is not separated from the legislative and the executive powers," wrote Montesquieu in his "Spirit of the Laws."

Very influenced by Montesquieu's philosophy, the famous American stateman and lawyer Alexander Hamilton characterized in the 1780ies by article n°78 of "the Federalist, or the new Constitution" the position of the judiciary vis-à-vis the other state powers by the striking words: "Whoever attentively considers the different powers must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. (…) The judiciary is beyond comparison the weakest of the three departments of power; It can never attack with the success either of the other two; and all possible care is requisite to enable it to defend itself against attacks"

An essential part of the rule of law is undoubtedly represented by the independence of the judicial power.

It is therefore imperative to consolidate this power as a guarantee of protection of the civil rights against the attacks of the State and other special interest groups.

Fundamental principles relating to the independence of the judiciary were enacted since 1985 by the United Nations. A special rapporteur in charge of the independence of the judges and lawyers is appointed to ensure the respect of these standards and to make them evolve up to always higher levels, in the interest of the citizens.

International organizations at regional level, in particular the Council of Europe, also enacted in these last years many standards.

"Noting that, in the performance of their legal duties, the role of the judges is essential with the protection of human right and of fundamental freedoms," and "wishing to promote the independence of the judges, which is an inherent element of the rule of law, and indispensable to judges' impartiality and to the functioning of the judicial system," the Council of Europe, in the preamble of Recommendation 2010/12 on the judges: independence, efficiency and responsibilities, stressed that "the independence of the judiciary secures for every person the right to a fair trial and therefore is not a privilege for judges, but a guarantee of respect for human rights and fundamental freedoms, allowing every person to have confidence in the justice system."

Despite the usefulness of this corpus of protective rules, it is up to an organization such as the International Association of Judges to promote its own rules and to strive in order to give them a binding character throughout the world, as well as to pay attention to the evolution of such standards, in order to grant judges and prosecutors more guarantees.



After the adoption between 1993 and 1995 of regional charters, a Universal Charter on the Statute of Judges was unanimously adopted by the IAJ in Taiwan in 1999.

Since then, many subjects appeared, which could not have been considered at that time. This is the case for ethics and deontology, which developed on the base of increased and legitimate requests from the citizens and as a development of the concept of impartiality.

This is also the case for communication, in a world which is more and more open and "connected." Finally, the same is true, in the framework of a difficult economic context, for budgetary matters, as well as for the question of remunerations and workload of judges.

Other subjects were tackled by the IAJ within the works of its First Study Commission. Conclusions of such works are liable to be integrated into the Charter.

At a moment in which, in many countries, the rights of the judiciary are threatened, judges are attacked, prosecutors are blamed, the update of the Universal Charter on the Statute of the Judges adopted in 1999 becomes a need.

During the meeting in Foz do Iguaçu in 2014, the Central Council of the IAJ approved the proposal of the Presidency Committee to update the Charter adopted in Taiwan in 1999.

During the Barcelona meeting a working group was set up, with the task to prepare a draft for a new Charter. It was composed of

- Christophe REGNARD, President of the IAJ (France), President of the working group
- Giacomo OBERTO, Secretary-General of the IAJ (Italy)
- Janja ROBLEK (Slovenia)
- Julie DUTIL (Canada)
- Alyson DUNCAN (USA)
- Walter BARONE (Brazil)
- Mario MORALES (Puerto Rico)
- Marie Odile THIAKANE (Senegal)
- Scheik KONE (Mali)
- Günter WORATSCH, Honorary President of the IAJ (Austria), in his quality of President of the Council of Honorary Presidents.

The draft charter was discussed during the springtime Regional Groups meetings in April and May 2017, them during the meeting of the Central Council in Santiago de Chile.

The following Charter, which presents the minimal guarantees required, was unanimously adopted, in the presence of M. Diego GARCIA SAYAN, special rapporteur of the United Nations on the independence of judges and lawyers on November 14th, 2017.

## ARTICLE 1 – GENERAL PRINCIPLES

The judiciary, as guarantor of the Rule of law, is one of the three powers of any democratic State.

Judges shall in all their work ensure the rights of everyone to a fair trial. They shall promote the right of individuals to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in the determination of their civil rights and obligations or of any criminal charge against them.

The independence of the judge is indispensable to impartial justice under the law. It is indivisible. It is not a prerogative or a privilege bestowed for the personal interest of judges, but it is provided for the Rule of law and the interest of any person asking and waiting for an impartial justice.

All institutions and authorities, whether national or international, must respect, protect and defend that independence.

## ARTICLE 2 – EXTERNAL INDEPENDENCE

### Article 2-1 – Warranty of the independence in a legal text of the highest level

Judicial independence must be enshrined in the Constitution or at the highest possible legal level.

Judicial status must be ensured by a law creating and protecting judicial office that is genuinely and effectively independent from other state powers.

The judge, as holder of judicial office, must be able to exercise judicial powers free from social, economic and political pressure, and independently from other judges and the administration of the judiciary.

### Article 2-2 – Security of office

Judges – once appointed or elected – enjoy tenure until compulsory retirement age or termination of their mandate.

A judge must be appointed without any time limitation. Should a legal system provide for an appointment for a limited period of time, the appointment conditions should insure that judicial independence is not endangered.

No judge can be assigned to another post or promoted without his/her agreement.

A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only as the effect of disciplinary proceedings, under the respect of the rights of defence and of the principle of contradiction.

Any change to the judicial obligatory retirement age must not have retroactive effect.

### Article 2-3 – Council for the Judiciary

In order to safeguard judicial independence a Council for the Judiciary, or another equivalent body, must be set up, save in countries where this independence is traditionally ensured by other means.

The Council for the Judiciary must be completely independent of other State powers.

It must be composed of a majority of judges elected by their peers, according to procedures ensuring their largest representation.

The Council for the Judiciary can have members who are not judges, in order to represent the variety of civil society. In order to avoid any suspicion, such members cannot be politicians. They must have the same qualifications in terms of integrity, independence, impartiality and skills of judges. No member of the Government or of the Parliament can be at the same time member of the Council for the Judiciary.

The Council for the Judiciary must be endowed with the largest powers in the fields of recruitment, training, appointment, promotion and discipline of judges.

It must be foreseen that the Council can be consulted by the other State powers on all possible questions concerning judicial status and ethics, as well as on all subjects regarding the annual budget of Justice and the allocation of resources to the courts, on the organisation, functioning and public image of judicial institutions.

### Article 2-4 – Resources for Justice

The other powers of the State must provide the judiciary with the means necessary to equip itself properly to perform its function.

The judiciary must have the opportunity to take part in or to be heard on decisions taken in respect to the budget of the Judiciary and material and human resources allocated to the courts.



### Article 2-5 – Protection of the judge and respect for judgments

The judge must benefit from a statutory protection against threats and attacks of any kind, which may be directed against him/her, while performing his/her functions.

Physical security for the judge and his/her family must be provided by the State. In order to ensure the serenity of judicial debates, protective measures for the courts must be put in operation by the State.

Any criticism against judgments, which may compromise the independence of the judiciary or jeopardise the public's confidence in the judicial institution, should be avoided. In case of such allegations, appropriate mechanisms must be put in place, so that lawsuits can be instigated and the concerned judges can be properly protected.

## ARTICLE 3 – INTERNAL INDEPENDENCE

### Article 3-1: Submission of the judge to the law

In the performance of the judicial duties the judge is subject only to the law and must consider only the law.

A hierarchical organisation of the judiciary in the sense of a subordination of the judges to the court presidents or to higher instances in their judicial decision making activity, save for the review of opinions as described below (see Article 3.2), would be a violation of the principle of judicial independence

### Article 3-2 – Personal autonomy

No influence, pressure, threat or intervention, either direct or indirect, from any authority, is acceptable.

This prohibition of orders or instructions, of any possible kind, onto judges does not apply to hiher courts, when they quash rulings by previous instances, in compliance with legally established procedures.

### Article 3-3 – Court administration

Representatives of the judiciary must be consulted before any decision affecting the performing of judicial duties.

As court administration can affect judicial independence, it must be entrusted primarily to judges.

Judges are accountable for their actions and must spread among citizens any useful information about the functioning of justice.

### Article 3-4 – How cases should be allocated

Allocation of cases must be based on objective rules, which are set forth and communicated previously to judges. Any decision on allocation must be taken in a transparent and verifiable way.

A case should not be withdrawn from a particular judge without valid reasons. The evaluation of such reasons must be done on the basis of objective criteria, pre-established by law and following a transparent procedure by an authority within the judiciary.

### Article 3-5 – Freedom of expression and right to create associations

Judges enjoy, as all other citizens, freedom of expression. However, while exercising this right, they must show restraint and always behave in such a way, as to preserve the dignity of their office, as well as impartiality and

independence of the judiciary.

The right of a judge to belong to a professional association must be recognized in order to permit the judges to be consulted, especially concerning the application of their statutes, ethical and otherwise, and the means of justice, and in order to permit them to defend their legitimate interests and their independence.

## ARTICLE 4 – RECRUITMENT AND TRAINING

### Article 4-1: Recruitment

The recruitment or selection of judges must be based only on objective criteria, which may ensure professional skills; it must be done by the body described in Article 2.3.

Selection must be done independently of gender, ethnic or social origin, philosophical and political opinions, or religious beliefs.

### Article 4-2 : Training

Initial and in-service trainings, insofar they ensure judicial independence, as well as good quality and efficiency of the judicial system, constitute a right and a duty for the judge. It shall be organised under the supervision of the judiciary.

## ARTICLE 5 – APPOINTMENT, PROMOTION AND ASSESSMENT

### Article 5-1 – Appointment

The selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification.

The selection should be carried out by the independent body defined by Article 2-3 of this Charter, or an equivalent body.

### Article 5-2 – Promotion

When it is not based on seniorship, promotion of a judge must be exclusively based on qualities and merits verified in the performance of judicial duties through objective and contradictory assessments.

Decisions on promotions must be pronounced in the framework of transparent procedures provided for by the law. They may occur only at the request of the judge or with his consent.

When decisions are taken by the body referred to Article 2-3 of this Charter, the judge, whose application for a promotion has been rejected, should be allowed to challenge the decision.

### Article 5-3 – Assessment

In countries where judges are evaluated, assessment must be primarily qualitative and be based on the merits, as well as on professional, personal and social skills of the judge; as for promotions to administrative functions, it must be based on the judge's managerial competencies.

Assessment must be based on objective criteria, which have been previously made public. Assessment procedure must get the involvement of the concerned judge, who should be allowed to challenge the decision before an independent body.

Under no circumstances can the judges be assessed on the base of judgments rendered by them.



## ARTICLE 6 – ETHICS

### Article 6-1 – General Principles

In every circumstances, judges must be guided by ethical principles.

Such principles, concerning at the same time their professional duties and their way of behaving, must guide judges and be part of their training.

These principles should be laid down in writing in order to increase public confidence in judges and the judiciary. Judges should play a leading role in the development of such ethical principles.

### Article 6-2 – Impartiality, dignity, incompatibilities, restraint

In the performance of the judicial duties the judge must be impartial and must so be seen.

The judge must perform his or her duties with restraint and attention to the dignity of the court and of all persons involved.

The judge must refrain from any behaviour, action or expression of a kind effectively to affect confidence in his/her impartiality and independence.

### Article 6-3 – Efficiency

The judge must diligently and efficiently perform his or her duties without any undue delays. Article

### 6-4 – Outside activities

The judge must not carry out any other function, whether public or private, paid or unpaid, that is not fully compatible with the duties and status of a judge.

He/she must avoid any possible conflict of interest.

The judge must not be subject to outside appointments without his or her consent.

### Article 6-5 – Judge's possible recourse to an independent authority in order to get advice

Where judges consider that their independence is threatened, they should be able to have recourse to an independent authority, preferably that described under Article 2-3 of this Charter, having means to enquire into facts and to provide them with help and support.

Judges should be able to seek advice on ethics from a body within the judiciary.

## ARTICLE 7 – DISCIPLINE

### Article 7-1 – Disciplinary proceedings

The administration of the judiciary and disciplinary action towards judges must be organized in such a way, that it does not compromise the judges genuine independence, and that attention is only paid to considerations both objective and relevant.

Disciplinary proceedings should be carried out by independent bodies, that include a majority of judges, or by an equivalent body.

Save in case of malice or gross negligence, ascertained in a definitive judgement, no disciplinary action can be instituted against a judge as the consequence of an interpretation of the law or assessment of facts or weighing of evidence, carried out by him/her to determine cases

Disciplinary proceedings shall take place under the principle of due process of law. The judge must be allowed

to have access to the proceedings and benefit of the assistance of a lawyer or of a peer. Disciplinary judgments must be reasoned and can be challenged before an independent body.

Disciplinary action against a judge can only be taken when provided for by pre-existing law and in compliance with predetermined rules of procedure. Disciplinary sanctions should be proportionate.

**Article 7-2 – Civil and penal responsibility**

Civil action, in countries where this is permissible, and criminal action, including arrest, against a judge must only be allowed under circumstances ensuring that his or her independence cannot be influenced.

The remedy for judicial errors should lie in an appropriate system of appeals. Any remedy for other failings in the administration of justice lies only against the state.

It is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of wilful default.

## ARTICLE 8 – REMUNERATION, SOCIAL PROTECTION AND RETIREMENT

**Article 8 – 1 – Remuneration**

The judge must receive sufficient remuneration to secure true economic independence, and, through this, his/her dignity, impartiality and independence.

The remuneration must not depend on the results of the judge's work, or on his/her performances, and must not be reduced during his or her judicial service.

Rules on remuneration must be enshrined in legislative texts at the highest possible level.

**Article 8-2 – Social protection**

The statute provides a guarantee for judges acting in a professional capacity against social risks related to illness, maternity, invalidity, age and death.

**Article 8-3 – Retirement**

The judge has a right to retirement with an annuity or pension in accordance with his or her professional category.

After retirement, the judge may exercise another legal professional activity, if it is not ethically inconsistent with its former legal activity.

It cannot be deprived of his pension on the sole ground that it exercises another professional activity.

## ARTICLE 9 – APPLICABILITY OF THE CHARTER

**Article 9-1 – Applicability to all persons exercising judicial functions**

This Charter is applicable to all persons exercising judicial functions, including non-professional judges.

**Article 9-2 – Applicability to Public prosecution**

In countries where members of the public prosecution are assimilated to judges, the above principles apply mutatis mutandis to these public prosecutors.

**Article 9-3 – Independence of prosecutors**

Independence of prosecutors–which is essential for the rule of law-must be guaranteed by law, at the highest possible level, in a manner similar to that of judges.



# LIST OF THE IAJ PRESIDENTS

- Ernesto Battaglini (Italy) – Salzbourg, 6/9/1953 to 9/10/1958
- Vincenzo Chieppa (Italy) – Rome, 10/10/1958 to 17/2/1961
- Jean Reliquet (France)- Roma, 18/2/1961 to 12/6/1963
- Frédéric Dumon (Belgium) – Amsterdam, 13/6/1963 to 15/10/1965
- Heinrich Bröll (Austria) – Vienne, 16/10/1965 to 7/10/1967
- Fritz Decker (Germany) – Luxembourg, 8/10/1967 to 9/4/1970
- Oscar Tenorio (Brasil) – Tunis, 10/4/1970 to 11/10/1972
- Jean Louis Ropers (France) – Nice, 12/10/1972 to 19/1/1974
- Alfons de Vreese (Belgium) – Firenze, 6/10/1974 to 16/10/1976
- Otto Kaufmann (Switzerland) – Lausanne, 16/10/1976 to 30/8/1978
- Angelo de Mattia (Italy) – Rio de Janeiro, 30/8/1978 to 25/10/1980
- Hédi Saied (Tunisia) – Tunis, 25/10/1980 to 12/11/1982
- Lars Erik Tillinger (Sweden) – Madeira, 12/11/1982 to 11/10/1984
- Felippe Augusto De Miranda Rosa (Brasil) – Triesenberg (Liechtenstein), 11/10/1984 to 3/10/1986
- Brian Walsh (Ireland) – Roma, 3/10/1986 to 24/8/1988

- Günter Woratsch (Austria) – Berlin, 24/8/1988 to 20/6/1990

- Arne Christiansen (Norway) – Helsinki, 20/6/1990 to 30/11/1992

- Philippe Abravanel (Switzerland) – Madrid, 30/11/1992 to 12/10/1994

- Rainer Voss (Germany) – Athens, 12/10/1994 to 25/9/1996

- Ramon Rodriguez Arribas (Spain) – Amsterdam, 25/9/1996 to 9/9/1998

- Paquerette Girard (France) – Porto, 9/9/1998 to 20/9/2000

- Tarek Bennour (Tunisia) – Recife, 20/9/2000 to 2/2/2003

- Ernst Markel (Austria) – Alicante, 2/2/2003 to 04/11/2004

- Sidnei Beneti (Brazil) – Valle de Bravo, 04/11/2004 to 02/10/2006

- Maja Tratnik (Slovenia) – Siofok, 02/10/2006 to 11/09/2008

- José Maria Bento Company (Spain) – Yerevan, 11/09/2008 to 11/11/2010

- Fatoumata Diakite (Ivory Coast) – Dakar, 11/11/2010 to 14/11/2012

- Gerhard Reissner (Austria) – Washington D.C., 14/11/2012 to 13/11/2014

- Cristina Crespo (Uruguay) – Foz do Iguaçu, 13/11/2014 to 18/10/2016

- Christophe Regnard (France) – Mexico City, 18/10/2016 to 17/10/2018

- G. Tony Pagone (Australia) – Marrakesh, 17/10/2018 to 11/09/2021

- José Manuel Igreja Matos (Portugal) – Rome (on-line), 11/09/2

# LIST OF THE PLACES WHERE THE 65 IAJ ANNUAL MEETINGS TOOK PLACE

1. Salzburg (Austria): 6 September 1953
2. Cadenabbia (Italy): 4 and 5 June 1954
3. Munich (Germany): 23 March 1956
4. Paris (France): 13 May 1958 – Rome (Italy): 10 October 1958
5. Roma (Italy): 18 February 1961
6. Amsterdam (the Netherlands): 10 and 13 June 1963
7. Bruxelles (Belgium): 26 and 27 June 1964
8. Vienna (Austria): 14, 15 and 16 October 1965
9. Salzburg (Austria): 22 and 24 September 1966
10. Luxembourg: 6-7 October 1967
11. Verona (Italy): 30 September and 1 October 1968
12. Berlin (Germany): 7 May 1969
13. Tunis (Tunisia): 6, 8 and 10 April 1970
14. Rio de Janeiro (Brasil): 16 and 21 August 1971
15. Nice (France): 12 October 1972
16. Bruges (Belgium): 18 October 1973
17. Firenze (Italy): 3 October 1974
18. Copenhagen (Denmark): 11 and 13 September 1975
19. Lausanne (Switzerland): 13 and 16 October 1976
20. Trier (Germany): 11-12 October 1977
21. Rio de Janeiro (Brasil): 28 and 30 August and 1 September 1978
22. Stockholm (Sweden): 7 and 9 June 1979
23. Tunis (Tunisia): 23 and 25 October 1980
24. Vienna (Austria): 11 and 13 November 1981
25. Madeira (Portugal): 8, 9 and 12 November 1982
26. Dakar (Senegal): 28 and 30 November 1983
27. Triesenberg (LIechtenstein): 8 and 11 October 1984
28. Oslo (Norway): 17 and 19 June 1985
29. Roma (Italy): 2-3 October 1986
30. Dublin (Ireland): 1987
31. Berlin (Germany): 22 and 24 August 1988
32. Macao: 23 and 27 October 1989
33. Helsinki (Finland): 18 and 20 June 1990
34. Crans Montana (Switzerland): 16, 18 and 19 September 1991
35. Sevilla (Spain): 28 and 30 September 1992
36. Sao Paulo (Brasil): 6, 7 and 9 September 1993
37. Athens (Greece): 10, 12 and 13 October 1994
38. Tunis (Tunisia): 11, 13 and 14 September 1995
39. Amsterdam (the Netherlands): 23, 25 and 26 September 1996
40. San Juan (Porto Rico): 13, 15 and 16 October 1997
41. Porto (Portugal): 7, 9 and 10 September 1998
42. Taipei (Taiwan): 15, 17 and 18 November 1999
43. Recife (Brasil): 18, 20 and 21 September 2000
44. Madrid (Spain): 24, 26 and 27 September 2001
45. Alicante (Spain): 1-2 February 2003
46. Vienna (Austria): 10-13 November 2003
47. Valle de Bravo (Mexico): 1-4 November 2004
48. Montevideo (Uruguay): 21-23 November 2005
49. Siofok (Hungary): 28 Sept-2 Ocotber 2006
50. Trondheim (Norway): 24-27 September 2007
51. Yerevan (Armenia): 8-11 September 2008
52. Marrakech (Morocco): 12-14 October 2009
53. Dakar (Senegal): 8-11 November 2010
54. Istanbul (Turkey): 5-8 September 2011
55. Washington D.C. (USA): 13-15 November 2012
56. Yalta (Ukraine): 5-10 October 2013
57. Foz do Iguaçu (Brazil): 9-13 November 2014
58. Barcelona (Spain): 4-8 October 2015
59. Mexico City (Mexico): 15-21 October 2016
60. Santiago de Chile (Chile): 12-16 November 2017
61. Marrakesh (Morocco): 14-18 October 2018
62. Nur-Sultan (Kazakhstan) : 15-19 September 2019
63. Rome (Italy) on-line meeting: 11-12 September 2021
64. Tel Aviv (Israel): 18-23 September 2022
65. Taipei (Taiwan): 16-21 September 2023

## LIST OF THE SECRETARIES-GENERAL OF THE IAJ FROM THE BEGINNING IN 1953 TILL NOW
### (NAME, COUNTRY OF ORIGIN, TIME OF OFFICE)

1. Pietro Pascalino (Italy) - Salzbourg, 6/9/1953 to 18/10/1973
2. Giovanni Elio Longo (Italy) - Bruges, 18/10/1973 to 25/9/1996
3. Massimo Bonomo (Italy) - Amsterdam, 25/9/1996 to 20/9/2000
4. Antonio Mura (Italy) - Recife, 20/9/2000 to 14/11/2012
5. Giacomo Oberto (Italy) – Washington D.C., 14/11/2012-



## IMPORTANT WORK OF IAJ IN RECENT 10 YEARS

### IBA

**2014**
- Declaration on judge Afiuni

**2015**
- "Nota Pública" of the President of Ibero American Group of the IAJ on Judge Luis María Cabral
- Declaration of the President of the Ibero American Group of the IAJ on facts occurred in Buriti (Brazil)

**2016**
- Joint IAJ (IBA Group) – Flam Declaration Concerning the Judiciary of Venezuela, with Special Regard to the Status of Judge Maria Lourdes Afiuni Mora

**2017**
- Solicitacion a el Consejo Judicial de la Republica Dominicana
- IBA Resolution on Spain

**2018**
- Resolution on Chile – IBA Group
- Costa Rica: motion_ IBA Group
- Statement on the judicial independence in Guatemala
- IBA Declaration on the situation in Spain
- Resolution of the IBA Group on the updating of the U.N. Basic Principles on the Independence of the Judiciary

**2022**
- Declaration IBA on the process of institutionalisation of "transitional" judges in Bolivia
- IBA declaration on the murder of the Ecuadorian judge
- IBA declaration on a murder of a Paraguayan prosecutor in Colombia
- Guatemala: report

**2023**
- IBA Statement on Argentina
- Statement on Brazil of the Iberoamerican Group

## 2014 Declaration on judge Afiuni

IAJ·UIM International Association of Judges
Union Internationale des Magistrats

**DECLARATION**
**ON THE CASE OF VENEZUELAN JUDGE MARIA LOURDES AFIUNI**

The International Association of Judges, a nonpartisan professional organization,composed of Judges' associations from 83 countries, whose primary purpose is to ensure judicial independence in the world, regarding the anniversary of the Universal Declaration of Human Rights, feels compelled to reiterate its complaints over the situation of Venezuelan criminal judge Maria Lourdes Afiuni.

Also, today, December 10, 2014, five years have passed since her arrest under various criminal charges, not yet clarified in any court.

Judge Maria Lourdes Afiuni, on December 10, 2009, a few minutes after ordering the conditional release of a detainee, was transferred to a detention center with common prisoners, where she remained for over a year in conditions that threatened her health and safety.

The decision of the judge who ordered the release, questioned by the Executive Power, was preceded by three Prosecutor no-shows at hearings with the person in custody. The judge was consistent with the opinion that it was a case of arbitrary detention. Despite this being a crime of public order, there has not been any valid judicial process initiated up-to-date.

The first criminal trial of judge Afiuni, at the time of her arrest, culminated in a declaration of nullity of the proceedings.

A new judicial process for similar charges with factual basis on that release, prepared in December 2009, has not begun until today.

Successive extensions of hearings have been mediated for insufficient reasons, such as leave of absence of Chief Judge of the Judicial Office in charge of the case, as stated by this organization representation last July 11, 2014.

Precisely today, December 10, 2014, a new citation was issued to this Judge to appear to the Court of Caracas, but a new hearing suspension is expected, given the Chief Judge of the Judicial Office responsible for the case is still on leave. Outside the jurisdictional scope, and by administrative action, the judge was removed fromoffice for disciplinary reasons, but, for unexplained justifications, the corresponding process has not been pursued.

Consequently, to maintain her status as a judge, she is prevented from performing any gainful activity, a situation that imposes her to live off family assistance.

The above circumstances were preceded by no less worrying events, such as the dismissal of other judges, who, by exhaustion of Venezuela courts internal ways, obtained a judgment of the Inter-American Court of Human Rights, where it wasordered to the Bolivarian Republic of Venezuela reinstate them in their respective positions.

That judgment of the highest international judicial bodies never fulfilled because, with alarming jurisprudence, the Supreme Court of Venezuela, by decision No. 1939 ofDecember 18, 2008, stated: "...an unenforceable ruling of the Inter-American Court of Human Rights, dated August 5, 2008, by ordering office reinstate of judges of the First Court of Administrative Disputes..." With the understanding that "...the execution of the sentence from the Inter-American Court of Human Rights, dated August 5, 2008, affects essential principles and values of the Bolivarian Republic of Venezuelaconstitutional order and could lead to an institutional chaos within the justice system, by attempting to change the autonomy of the constitutionally mandated judiciarypower and the established disciplinary system..."

Both situations are negatively impacting the independence of other judges, and thereby undermine the guarantees needed in a State, for the effective protection of the rights of its citizens.

Under such circumstances, the International Association of Magistrates reiterates its concern and urges the judicial authorities of the Bolivarian Republic of Venezuela to respect the Universal Declaration of Human Rights and thereby ensure the right of Judge Afiuni to an effective remedy before national courts, and give protection against acts that violate her fundamental rights recognized by the constitution or by law.

It is indisputable today, in light of the provisions of Articles 8-10 of the Universal Declaration of Human Rights, that no one shall be subjected to arbitrary arrest, detention or exile and that everyone is entitled, in full equality, to a fair and public hearing by an independent and impartial tribunal, in the determination of one's rights and obligations or to have examined any criminal charge against oneself.

Thus it is established in Articles 8-10 of the Declaration of Human Rights of 1945,and there are not valid reasons to exclude this case of such protection.

December 10th, 2014

Cristina Crespo
President of the IAJ

Rafael de Menezes
Vice-President, President of the Ibero-American Group of the IAJ

## 2015 "Nota Pública" of the President of Ibero American Group of the IAJ on Judge Luis María Cabral

International Association of Judges
promoting an independent judiciary worldwide
Grupo Ibero-Americano
www.iaj-uim.org

NOTA PÚBLICA

El Grupo IberoAmericano de la Unión Internacional de Magistrados observa con profunda preocupación la resolución adoptada en el día de la fecha por el Consejo de la Magistratura del Poder Judicial de la Nación Argentina que, por simple acto administrativo, removió al doctor Luis María Cabral -magistrado titular del Tribunal Oral en lo Criminal nº 9 de la Capital Federal- de la subrogación a que desempeñaba desde el año 2011 en la Vocalía nº 2 de la Cámara Federal de Casación Penal.

La decisión del Plenario del Consejo constituye un grave ataque a la estabilidad de los magistrados -incluidos los subrogantes - cuando, como el caso, se trata de una remoción directa sin motivación disciplinaria alguna y, por tanto, carente de la garantía mínima del derecho de defensa que asiste a todo los ciudadanos, incluso los magistrados.

Es de ver que la designación del Dr. Cabral como juez subrogante de la Cámara Federal de Casación Penal no se encontraba limitada en el tiempo ni sujeta a necesidad de ratificación alguna por parte del Consejo de la Magistratura. La única condición prevista para el cese de esa subrogación era la designación de un nuevo magistrado titular, conforme los mecanismos legales y reglamentarios.

La resolución del Consejo se erige, pues, en un grave atentado contra la actuación independiente de la magistratura del hermano país.

En el caso, además del apartamiento del doctor Cabral, se designó en su lugar a otro subrogante elegido de modo directo de entre la lista de abogados conjueces designados por el Poder Ejecutivo Nación.

Esa peculiar situación no puede pasar inadvertida en tanto el doctor Cabral tenía a su cargo la decisión de causas de gran trascendencia pública sobre las que podrían recaer espurios intereses políticos.

Por lo expuesto, y en atención a la inaudita gravedad de los hechos reseñados, el Grupo IberoAmericano de la Unión Internacional de Magistrados convoca a todas las autoridades argentinas y en especial a los actores judiciales a recomponer la situación a fin de respetar la independencia del Poder Judicial de la Nación, en tanto que garante último de los derechos de los ciudadanos.

Cabe recordar en estas circunstancias que para garantizar el funcionamiento de las instituciones democráticas, es preferible soportar un error judicial, que someter a uno de los tres Poder del Estado a intereses gubernamentales.

Brasilia, Brasil, 25 de junio de 2015

Juez Rafael de Menezes
Presidente del Grupo Iberoamericano
Vice Presidente de la Union International de Magistrados



## 2015 Declaration of the President of the Ibero American Group of the IAJ on facts occurred in Buriti (Brazil)

IAJ·UIM International Association of Judges
Union Internationale des Magistrats

Nota Pública

La Unión Internacional de Magistrados - UIM, fundada el 1953 en Austria, hoy con sede en Roma, que reúne más de ochenta asociaciones nacionales de magistrados, de los cinco continentes, viene a público por su Grupo Iberoamericano, en la defensa de la independencia del juez en todo el mundo:

1 - decir de su preocupación con la violencia sufrida por el juez Jorge Leite de la ciudad de Buriti, Maranhão, Brasil, que en el dia de anteayer, fue amenazado y tuvo el Fórum quemado por personas inconformadas con una decisión judicial que mantuvo en el cargo el alcalde de la ciudad.
2 - El Grupo Iberoamericano de la UIM recuerda que sin juez independiente, con estructura, seguridad y condiciones de trabajo, no hay garantía a la aplicación de los derechos humanos en ningún país.
3 - pide aún las autoridades de la Provincia de Maranhão que presten todo el apoyo al magistrado, para que pueda ejercer su papel constitucional, pues problemas con decisiones judiciales son resueltos con el recurso al Tribunal, y no con amenaza al juez.
4 - Declara por fin, que aguarda con confianza la averiguación de los hechos y punición de los responsables por la violencia.

Recife, el 21 de enero de 2015

Juiz Rafael de Menezes
Presidente del Grupo Iberoamericano y Vicepresidente de la Unión Internacional de Magistrados

**2016 Joint IAJ (IBA Group) – Flam Declaration Concerning the Judiciary of Venezuela, with Special Regard to the Status of Judge Maria Lourdes Afiuni Mora**

International Association of Judges
FLAM

CARTA ABIERTA A LAS AUTORIDADES DEL GOBIERNO DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA, DE SU ASAMBLEA NACIONAL, DE SU PODER JUDICIAL Y DE LAS AUTORIDADES RECIENTEMENTE ELECTAS DE DICHA ASAMBLEA NACIONAL

El Grupo Iberoamericano de la Unión Internacional de Magistrados (Grupo IBA de la UIM), y la Federación Latinoamericana de Magistrados (FLAM), ambas entidades que agrupan a las asociaciones de jueces de gran mayoría de los países de Iberoamérica (incluidos, en el caso de la primera organización, a asociaciones de magistrados de España y Portugal), dirige la presente carta abierta a las autoridades venezolanas más arriba enunciadas, a fin de que se adopten las medidas destinadas a poner término a la injusta situación que afecta a la jueza MARÍA LOURDES AFIUNI MORA, que se encuentra acusada de diversos e inexistentes delitos por el solo hecho de cumplir con su función jurisdiccional, habiendo sido sometida a diversas medidas cautelares (entre ellas, prisión preventiva y arresto domiciliario, además de arraigo nacional); a múltiples malos tratos y hostigamientos; y a un extenso juicio sin que se cumplan las garantías de un debido proceso (contraviniendo los derechos y garantías fundamentales consagrados en la Declaración de Derechos Humanos de la ONU, y en el Pacto de Derechos Civiles y Políticos y la Convención Americana de Derechos Humanos), además de encontrarse suspendida en el ejercicio de su cargo y de sus remuneraciones.

En efecto, el día 10 de diciembre de 2009, la Jueza MARIA LOURDES AFIUNI MORA del Tribunal Trigésimo Primero, en ejercicio de sus funciones como Jueza de Control de Caracas, República Bolivariana de Venezuela, fue abruptamente privada de su libertad tras haber emitido una decisión judicial de decretar la sustitución de la medida cautelar impuesta en una causa penal ventilada en el despacho a su cargo. Dicha privación de libertad se produjo como reacción inmediata a la decisión judicial tomada por la Jueza AFIUNI, a pesar que la misma se dio en el ejercicio de sus funciones y apegada a las



International Association of Judges
FLAM

normas de procedimiento penal vigentes en la República Bolivariana de Venezuela. La privación de libertad de la Jueza AFIUNI, se produjo en la sede del Tribunal donde laboraba sin que mediara una orden emitida por las autoridades competentes y a pocos minutos de haberse expedido una resolución de medida cautelar menos gravosa en la causa sometida a su consideración judicial. La Jueza MARÍA LOURDES AFIUNI MORA fue recluida en el Instituto Nacional de Orientación Femenina (INOF) donde permaneció con delincuentes comunes en contravención a las normas y principios internacionales que claramente establecen su derecho a permanecer en un sitio diferenciado de prisioneros comunes. Estando privada de su libertad, en reiteradas ocasiones fue víctima de atentados contra su vida e integridad física por parte de otras reclusas, y según ha denunciado –sin que tal hecho haya sido investigado por el Ministerio Público-, violada sexualmente durante su reclusión. También le fue denegado el acceso a tratamiento médico apropiado, lo cual dio lugar a complicaciones en su estado de salud, por lo que fue necesaria una intervención quirúrgica de emergencia.

Al cabo de numerosas trasgresiones al debido proceso y otros derechos humanos, el juicio comenzó en noviembre de 2012, pero el 23 de octubre de 2013 se interrumpió y anuló debido a la ausencia de la fiscalía en una audiencia probatoria. El tribunal ordenó el reinicio del juicio. No obstante, es evidente que no se han tomado medidas para garantizar un juicio justo a favor de AFIUNI ni para remediar la falta sistemática de independencia del poder judicial. Desde que se reinició el juicio, en la audiencia de preparación se desestimó todas las pruebas presentadas por la defensa y se aceptaron todas las de la fiscalía, entre ellas 37 testigos; y las audiencias se realizan con un desfase de varias semanas, atentándose contra los principios de continuidad y concentración.

Seis años han transcurrido desde el arresto de MARÍA LOURDES AFIUNI -lo cual constituye una violación del derecho de a ser juzgada en un plazo razonable- y, sin que se pueda prever una decisión final, se mantiene en un

proceso penal caracterizado por sus múltiples violaciones de los derechos humanos. El sistema de justicia penal venezolano, y en particular su régimen de jueces provisionales cuyo nombramiento y destitución responden a unos parámetros inadecuados, así como la no aplicación del código ético y las frecuentes injerencias del ejecutivo, no contiene las garantías institucionales adecuadas para asegurar la independencia judicial, violando el derecho de la jueza AFIUNI a un juicio justo por un tribunal independiente e imparcial. Se concluye que AFIUNI ha sido sometida a múltiples violaciones del debido proceso y otros derechos humanos a lo largo de su juicio,

La situación de las violaciones de los derechos humanos y las garantías fundamentales de la Jueza AFIUNI fue presentada durante la Asamblea General de la Federación Latinoamericana de Magistrados, por la Relatora Especial de Naciones Unidas para la Independencia de Jueces y Abogados, Dra. Gabriela Carina Knaul de Albuquerque e Silva, con expresión de la grave preocupación que ha generado en el ámbito internacional, los hechos ocurridos en perjuicio de la independencia judicial y más directamente de la Jueza MARÍA LOURDES AFIUNI MORA. Asimismo, su situación ha sido denunciada por Grupo de Trabajo sobre la Detención Arbitraria de la Organización de las Naciones Unidas (GTDA); Human Rights Foundation; International Bar Association (IBA); y recientemente (15 de noviembre de 2015), por el Alto Comisionado de las Naciones Unidas en la Reunión Especial del Consejo de Derechos Humanos. Todo lo anterior, sin perjuicio de las reiteradas declaraciones que anualmente han emitido desde 2009 tanto la UIM (a través de su grupo IBA), y la FLAM.

Los hechos anteriormente enunciados nos llevan a pedir a las autoridades venezolanas competentes que, en respeto de las garantías y derechos fundamentales de la Jueza MARIA LOURDES AFIUNI MORA, se adopten las medidas tendientes para que cese la persecución penal de que es objeto, por no haber incurrido en delito alguno, procediéndose al sobreseimiento definitivo de la causa seguida en su contra; o en subsidio se



dicte por el Poder Legislativo una Ley de Amnistía que la exima de la infundada responsabilidad penal que se le imputa; o, en defecto de las anteriores, que se le garantice el derecho a un juicio que cumpla con todos los requisitos de un debido proceso, conforme a los tratados internacionales ya mencionados y a la propia legislación venezolana. En cualquiera de los casos anteriores, que se restituya a la jueza AFIUNI en el pleno ejercicio de su cargo de magistrada y, consecuencialmente, se le paguen retroactivamente la totalidad de sus remuneraciones impagas desde que se produjo su inicua imputación.

Firman:

RAFAEL DE MENEZES
Presidente del Grupo IBA- UIM

WILFREDO SAGASTUME
Presidente de FLAM

**2017 Solicitacion a el Consejo Judicial de la Republica Dominicana**

International Association of Judges
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*Grupo Ibero-Americano*
*www.iaj-uim.org*

SOLICITACIÓN A EL CONSEJO JUDICIAL DE LA REPUBLICA DOMINICANA

El Grupo Ibero Americano de la Unión Internacional de Magistrados ha tenido conocimiento de un manifiesto de llamamiento reflexivo al Honorable Consejo del Poder Judicial de la Republica Dominicana, hecho este mes por la Asociación Jueces Dominicanos para la Democracia (JUDEMO), sobre algunos procedimientos y decisiones disciplinarias.

Sin duda es importante el control disciplinario de jueces, funcionarios y empleados del Poder Judicial pero siempre con sujeción estricta al debido proceso y a los principios y garantías procesales que aseguran un verdadero Estado de Derecho.

En ese tenor solicitamos al Honorable Consejo del Poder Judicial de Republica Dominicana que en el ejercicio de la atribución disciplinaria reivindique el principio constitucional de legalidad, para que prevalezca como norma de estricto cumplimiento el que ningún juez sea juzgado por el contenido de sus fallos, ni mucho menos destituido, ya que de ser así desaparecería la independencia judicial, fomentando el temor de los administradores de justicia.

Cabe siempre traer a colación que la independencia judicial implica la plena libertad para interpretar y aplicar el derecho frente a los casos sometidos al imperio soberano de cada juez, sin otra atadura que no sean los criterios objetivos de la administración de justicia, tales como la valoración probatoria, la ley, el precedente judicial, la norma procesal y la dogmática científica, cuyo fallo adquiera la debida legitimación mediante la debida motivación, posible de ser impugnadas ante los tribunales superiores a través de los recursos correspondientes.

Para el Grupo Ibero Americano de la Unión Internacional de Magistrados, es causa de preocupación una orden de *suspensión indefinida* de un juez, sin disfrute de sueldos, frente a determinada denuncia, proveniente de alguna parte interesada o de un cuestionamiento de los medios de comunicación, siendo suficiente para la suspensión indefinida de empleo y sueldo a un juez, lo que no es más que una sanción disciplinaria con carácter anticipado, por la situación económica en la que queda el administrador de justicia, junto a su familia, en tanto que todo ello lesiona severamente su dignidad humana, principio rector del Estado Social y Democrático de Derecho.

En tal sentido, solicitamos el reintegro en sus funciones o con disfrute de salarios de los jueces que estén suspendidos indefinidamente, hasta tanto exista una decisión definitiva o que en su defecto se autorice que durante el tiempo de suspensión continúen percibiendo sus salarios a los fines de no afectar sus derechos fundamentales y los de su familia.

La Unión Internacional de Magistrados tiene su oficina en Roma, Italia, y reúne 85 asociaciones nacionales de jueces de los cinco continentes, y desde 1953 ha surgido para ser la voz representativa de jueces en todo el mundo y junto a las Naciones Unidas, es un órgano de fortalecimiento de la independencia judicial, garantía que se erige como *conditio sine qua non* para que los sistemas judiciales desarrollen adecuadamente el rol que les incumbe en una sociedad democrática.

Por lo tanto, es muy importante el sometimiento de la tramitación disciplinaria de los jueces a las garantías del debido proceso de legalidad constitucional, al tiempo que debe ser reformado el Reglamento de Carrera Judicial con el objeto de buscar un plazo de duración máxima y prohibir la suspensión sin disfrute salarial.

A tales fines solicitamos la reflexión del Honorable Consejo del Poder Judicial, órgano de gobierno de los Jueces, de la soberana hermana República Dominicana.

Sábado, 7 de octubre de 2017

Juez Rafael de Menezes
Presidente
Recife, Brasil

Juez Francisco Silla
Vice Presidente
Valencia, España

IAJ·UIM International Association of Judges
Union Internationale des Magistrats

**2017 IBA Resolution on Spain**

International Association of Judges
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Resolución del Grupo Iberoamericano de la Unión Internacional de Magistrados en apoyo a los Jueces de España

No existe democracia al margen del Estado de Derecho. Por definición, la división de Poderes garantiza su vigencia. Partiendo de esta reflexión, el Grupo Iberoamericano de la Unión Internacional de Magistrados, hace llegar su pleno apoyo y respaldo a los Jueces y Magistrados de España, por su defensa firme e independiente del orden constitucional ante los sucesos desarrollados en la Comunidad de Cataluña.

Recife, Brasil, 1 de octubre de 2017

Juez Rafael de Menezes
Presidente

Juez Francisco Silla
Vice-presidente

IAJ·UIM International Association of Judges
Union Internationale des Magistrats



**2018 Resolution on Chile – IBA Group**

International Association of Judges
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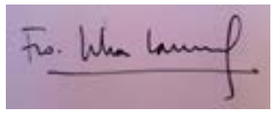
**Resolución del grupo Ibero Americano de la Union Internacional de Magistrados IAJ-UIM (Grupo IBA)**

En reunión de Marrakech, el 15 de octubre de 2018, a raiz de la acusación constitucional ocurrida este año en contra de jueces de la sala penal de la Corte Suprema de Justicia Chilena, el grupo Ibero Americano de la UIM, exhorta al Poder Legislativo de Chile el rechazo de todo Juicio Político que se funde en el contenido de sentencias judiciales, ya que constituye una vulneración a la Independencia Judicial y vulnera lo establecido en el Estatuto Universal del Juez.

Marruecos, octubre 2018



Juez Rafael de Menezes
Brasil - Presidente

Juez Francisco Silla
España - Vicepresidente

## 2018 Costa Rica: motion_ IBA Group

International Association of Judges
promoting an independent judiciary worldwide
Grupo Ibero-Americano
www.iaj-uim.org

MOCIÓN sobre la importancia de la remuneración de los jueces para la independencia judicial

La presidencia del Grupo Iberoamericano de la Unión Internacional de Magistrados (UIM) tuvo conocimiento por la Asociación Costarricense de la Judicatura (ACOJUD) de un proyecto de reforma fiscal que regula la estructura salarial del Poder Judicial, alterando la seguridad jurídica de la remuneración de los jueces, sin que dichas modificaciones hayan sido consultadas a la Corte Suprema de Justicia.

La Unión Internacional de Magistrados recuerda que sin un juez independiente no hay garantía para los derechos humanos en un país, y un juez sin retribuciones adecuadas y compatibles con la responsabilidad de su trabajo, no tiene independencia para decidir en derecho.

Y más, cuando el gobierno altera la remuneración de los jueces, viola la autonomía del Poder Judicial, el ejercicio de la administración de justicia y de la independencia de los poderes, indispensable del Estado de Derecho.

Por esto, en defensa de la democracia, solicita el presidente del Grupo Iberoamericano de la UIM, que el Gobierno de la República de Costa Rica respete la independencia del Poder Judicial y discuta con los jueces la reforma fiscal en curso en su país.

Recife, Brasil y Valencia, España, septiembre de 2018

Juez Rafael de Menezes
Presidente

Juez Francisco Silla
Vice-Presidente

IAJ·UIM International Association of Judges
Union Internationale des Magistrats



## 2018 Statement on the judicial independence in Guatemala

International Association of Judges
promoting an independent judiciary worldwide
Grupo Ibero-Americano
www.iaj-uim.org

MOCIÓN POR LA INDEPENDENCIA JUDICIAL
EN LA REPUBLICA DE GUATEMALA

La presidencia del Grupo Iberoamericano de la Unión Internacional de Magistrados - UIM, convencida que la justicia independiente es un derecho de los pueblos que garantiza la paz y convivencia social.

Que tenemos conocimiento que en la República de Guatemala, en los últimos años, la Justicia está desempeñando un papel importante para la consolidación del Estado de Derecho, en donde los jueces independientes se encuentran en grave riesgo de recibir presiones indebidas, amenazas y limitaciones al ejercicio libre de la judicatura.

Manifestamos nuestra solidaridad y acompañamiento a las juezas y jueces guatemaltecos que de manera independiente y democrática, en condiciones adversas, cumplen con la delicada misión de administrar justicia. Particularmente, respaldamos a la jueza de garantías Erika Lorena Aifán Dávila, del Juzgado de Procesos de Mayor Riesgo “D” de la ciudad de Guatemala y las acciones gremiales de la Asociación Guatemalteca de Jueces por la Integridad (AGJI); a quienes, les manifestamos que estamos atentos a los acontecimientos.

Requerimos del Estado de Guatemala, del Poder Judicial, de la ciudadanía, el respeto y protección de sus juezas y jueces independientes.

Dado en Recife, Brasil, hoy 2 de junio de 2018

Juez Rafael de Menezes
Presidente del grupo Ibero Americano de la UIM
rafael@amb.com.br

## 2018 IBA Declaration on the situation in Spain

INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI

PALAZZO DI GIUSTIZIA - PIAZZA CAVOUR - 00193 ROMA - ITALY

**DECLARACION DEL GRUPO IBA SOBRE LA SITUACION EN ESPANA**

El Grupo Iberoamericano de la UIM, muestra su apoyo a las reivindicaciones que durante estas fechas están llevando a cabo los Jueces y Magistrados así como los miembros de la Fiscalía del Reino de España, por cuanto que todas estas reivindicaciones son acordes con el contenido de la Carta Universal del Juez aprobada en Santiago de Chile el 14 de noviembre de 2017.

Estas reivindicaciones consisten en un reforzamiento de la independencia externa e interna del Poder Judicial que se ha visto afectada durante los últimos años.

Independencia externa, para cuyo logro interesan la reforma del sistema de elección de la mayoría de los miembros del Consejo General del Poder Judicial de forma directa por Jueces y Magistrados y de entre los integrantes de la carrera judicial, así como la devolución a este órgano de las competencias que les fueron retiradas en las últimas reformas; una protección eficaz a los integrantes de la carrera judicial contra la amenazas y ataques de cualquier tipo que se les pueda dirigir por el desempeño de su función jurisdiccional, como los ocurridos durante los últimos meses contra ellos y sus familias; supresión de los Magistrados autonómicos; y, que los nombramientos discrecionales que se efectúen obedezcan a criterios exclusivos de mérito y capacidad.

Independencia interna, para lo que se precisa un aumento de la dotación presupuestaria a fin de que se puedan afrontar los retos de una modernización de la Administración de Justicia; un incremento de la plantilla judicial acorde con la carga de trabajo; actualización de la Ley de Planta y Demarcación en consonancia con la realidad social del momento; revisión de la regulación de la oficina judicial; mejora de las condiciones profesionales recuperando el poder adquisitivo de las remuneraciones, las licencias y permisos de las que fueron privados tras la reforma de la LO 8/2012.



## 2018 Resolution of the IBA Group on the updating of the U.N. Basic Principles on the Independence of the Judiciary

IAJ·UIM International Association of Judges
Union Internationale des Magistrats

**RESOLUTION**

**Relating to the updating of the Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26 August to 6 September 1985 and confirmed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985**

The International Association of Judges ("the IAJ") observes that the "Universal Charter of the judge," has not been reconsidered since its adoption in Taiwan in 1999 and has decided in 2014 to update this reference text.

A new Charter was adopted unanimously by the IAJ member associations at its annual meeting in Santiago de Chile in November 2017.

The IAJ continues to welcome the adoption by the United Nations in 1985 of the "Basic Principles on the Independence of the Judiciary."

The IAJ considers that these general principles continue to be relevant 33 years after their adoption and stresses the importance of worldwide rules designed to ensure the independence of judges and to enable judges, through the creation of associations, to defend the principles of independence.

Nevertheless, it believes that some of these principles could be clarified, including the guarantees of irremovability, the training of judges and the distribution of cases within the courts.

It also notes that some topics which are now at the centre of the concerns of judges do not appear in these principles, such as:

- the rules relating to the organization of justice and internal independence of the judiciary,
- the conditions under which justice must be rendered effectively,
- the guarantees for remuneration and retirement,
- the possible creation of a body, whose composition ensures its independence, in charge of recruitment, appointment, promotion and discipline,
- the clarification of the ethical and deontological requirements, in the context of increased demands from citizens.

The Ibero-American Group of the International Association of Judges therefore calls for an update of the principles enacted in 1985.

It calls on the United Nations and national governments to engage in this evolution and declares its readiness to contribute to it.

Brasilia, April 18, 2018.

## 2022 Declaration IBA on the process of institutionalisation of "transitional" judges in Bolivia

*Grupo Iberoamericano – IBA*
International Association of Judges - IAJ
*promoting an independent judiciary worldwide*

**PRONUNCIAMIENTO SOBRE EL PROCESO DE INSTITUCIONALIZACIÓN DE JUEZAS Y JUECES TRANSITORIOS EN BOLIVIA**

**LA UNIÓN INTERNACIONAL DE MAGISTRADOS – UIM** es una organización internacional profesional y apolítica, fundada en 1953, que reúne asociaciones nacionales de jueces de 94 países y cuyo principal objetivo es salvaguardar la independencia de las autoridades judiciales, la que constituye requisito esencial de la función judicial y una garantía del respeto por los derechos humanos y la libertad.

**EL GRUPO IBEROAMERICANO DE LA UIM EXPRESA SU PREOCUPACUÓN** ante la noticia de que, en el proceso de institucionalización de 489 cargos de jueces en Bolivia, los llamados jueces 'transitorios', el reglamento prevé que el pueblo boliviano pueda hacer llegar al Consejo de la Magistratura sus quejas o denuncias en contra de dichos jueces y juezas antes de que pasen de ser jueces 'transitorios' a jueces institucionalizados, sin que, aparentemente, se exija la necesaria indicación de las eventuales pruebas de dichas denuncias.

**RECUERDA** que el ***Estatuto del Juez Iberoamericano*** establece en su artículo 14 – Principio de inamovilidad – que como garantía de su independencia los jueces deben ser inamovibles desde el momento en que adquieren tal categoría e ingresan a la Carrera Judicial, en los términos que la constitución establezca. No obstante, podrán ser suspendidos o separados de sus cargos por incapacidad física o mental, evaluación negativa de su desempeño profesional en los casos en que la ley lo establezca, o destitución o separación del cargo declarada en caso de responsabilidad penal o disciplinaria, por los órganos legalmente establecidos, mediante procedimientos que garanticen el respeto del debido proceso y, en particular, el de los derechos de audiencia, defensa, contradicción y recursos legales que correspondan.

**REITERA** que, conforme la jurisprudencia de la Corte Interamericana de Derechos Humanos, la destitución de Jueces y Juezas de todos los rangos obedece exclusivamente a la comprobación de causales permitidas, mediante un procedimiento objetivo e imparcial, derivado del debido proceso constitucional y convencional y por ello, las

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*Grupo Iberoamericano – IBA*
International Association of Judges - IAJ
*promoting an independent judiciary worldwide*

actuaciones contrarias a estos principios convierten los actos de destitución en arbitrarios e ilegales.

**El GRUPO IBEROAMERICANO DE LA UIM SOLICITA** al Consejo de la Magistratura de Bolivia que observe los estándares internacionales sobre el tema, no permitiendo que jueces y juezas del país dejen de ser confirmados en sus cargos simplemente a raíz de quejas o denuncias sin comprobación, en evidente detrimento de la independencia judicial.

Dado en São Paulo, Brasil, el 07 de septiembre de 2022.

**Magistrado WALTER BARONE**
Presidente Grupo IBA-UIM

**Magistrado FRANCISCO SILLA**
Vicepresidente Grupo IBA-UIM

Rua Tabatinguera, 140, Sobreloja, CEP 01020-901, São Paulo, Brasil, Teléfono: +55113295-5171

## 2022 IBA declaration on the murder of the Ecuadorian judge

*Grupo Iberoamericano – IBA*
International Association of Judges - IAJ
*promoting an independent judiciary worldwide*

**PRONUNCIAMIENTO SOBRE EL ASESINATO DEL JUEZ ECUATORIANO NELSON PATRICIO YÁNEZ PAREDES**

**LA UNIÓN INTERNACIONAL DE MAGISTRADOS – UIM** es una organización internacional profesional y apolítica, fundada en 1953, que reúne asociaciones nacionales de jueces de 94 países y cuyo principal objetivo es salvaguardar la independencia de las autoridades judiciales, la que constituye requisito esencial de la función judicial y una garantía del respeto por los derechos humanos y la libertad.

**EL GRUPO IBEROAMERICANO DE LA UIM EXPRESA SU FUERTE RECHAZO** al cobarde asesinato del Juez Ecuatoriano, Dr. Nelson Patricio Yánez Paredes, ocurrido en la ciudad de Lago Agrio, Ecuador, quien se desempeñaba como Juez de la Unidad Judicial Multicompetente Penal de la Provincia de Sucumbios.

**El GRUPO IBEROAMERICANO DE LA UIM SOLICITA** a las autoridades de del Ecuador que hagan todos los esfuerzos necesarios para que se conozca la autoría de ese delito y sus motivaciones, permitiendo que los responsables sean procesados y condenados.

Finalmente, **el GRUPO IBEROAMERICANO DE LA UIM SE SOLIDARIZA** con la familia de la víctima en este momento de luto.

Dado en São Paulo, Brasil, el 25 de agosto de 2022.

**Magistrado WALTER BARONE**
Presidente Grupo IBA-UIM

**Magistrado FRANCISCO SILLA**
Vicepresidente Grupo IBA-UIM

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## 2022 IBA declaration on a murder of a Paraguayan prosecutor in Colombia

*Grupo Iberoamericano – IBA*
International Association of Judges - IAJ
*promoting an independent judiciary worldwide*

**PRONUNCIAMIENTO SOBRE EL ASESINATO DEL FISCAL DE LA REPÚBLICA DEL PARAGUAY MARCELO PECCI**

**LA UNIÓN INTERNACIONAL DE MAGISTRADOS – UIM** es una organización internacional profesional y apolítica, fundada en 1953, que reúne asociaciones nacionales de jueces de 92 países y cuyo principal objetivo es salvaguardar la independencia de las autoridades judiciales, la que constituye requisito esencial de la función judicial y una garantía del respeto por los derechos humanos y la libertad.

**EL GRUPO IBEROAMERICANO DE LA UIM EXPRESA SU FUERTE RECHAZO** al cobarde asesinato del Fiscal de la República del Paraguay, Dr. Marcelo Pecci, ocurrido en Cartagena, Colombia.

Asimismo, **EXPRESA SU PREOCUPACIÓN** ante la noticia de que ese hecho innominable pueda haber ocurrido en virtud de las acciones emprendidas por el Dr. Marcelo Pecci, en el regular ejercicio de su fiscalía, lo que es inaceptable pues representa incuestionable grave atentado contra el Estado Democrático de Derecho y la Democracia.

**El GRUPO IBEROAMERICANO DE LA UIM SOLICITA** a las autoridades de Colombia y del Paraguay que hagan todos los esfuerzos necesarios para que se conozca la autoría de ese delito, permitiendo que los responsables sean procesados y condenados.

Finalmente, **el GRUPO IBEROAMERICANO DE LA UIM SE SOLIDARIZA** con la familia de la víctima en este momento de luto.

Dado en São Paulo, Brasil, el 11 de mayo de 2022.

**Magistrado WALTER BARONE**
Presidente Grupo IBA-UIM

**Magistrado FRANCISCO SILLA**
Vicepresidente Grupo IBA-UIM

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# ATTACKS ON JUDICIAL INDEPENDENCE IN GUATEMALA

**Report of the Latin American Federation of Judges (FLAM) and the International Association of Judges (IAJ) on their visit to Guatemala**

October 2022



## CONTENTS

# EXECUTIVE SUMMARY

This report presents the results of a joint delegation by the Latin American Federation Judges (FLAM) and the International Association of Judges (IAJ) that visited Guatemala August 9-11, 2022. We organized the visit considering the alarming news we have received about the attacks on judicial independence and the persecution of judges and prosecutors in Guatemala.

During the visit, we held meetings with authorities from the three branches of government and we heard testimony from judges, prosecutors and lawyers who are being criminalized for their carrying out their work.

The delegation was able to verify a pattern of systematic attacks against judges, prosecutors, and former lawyers of the International Commission against Impunity (CICIG) who have worked on cases involving significant corruption and human rights violations committed during the internal armed conflict. We are concerned that criminal law is being misused to criminalize judges and justice operators in retaliation for the work they have carried out independently. We are particularly concerned about judges Yassmin Barrios, Miguel Ángel Gálvez and Carlos Ruano, as well as members of the Guatemalan Association of Judges for Integrity (AGJI), who face ongoing attacks for defending judicial independence.

The lack of action by the Public Prosecutor's Office is striking, having failed to investigate the individuals and destabilizing actors who are behind the attacks, some of whom have even threatened justice officials and operators publicly on social media without facing any consequences.

The government's failure to comply with security measures granted by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights is also concerning. The measures were granted to protect judges and prosecutors who are at risk. Several justice operators have left the country and sought refuge abroad because of criminalization and the lack of protection provided by the State.

The delegation found that there are not minimum conditions and guarantees for the functioning of an independent judiciary in Guatemala. This situation could generate more impunity and instability in the country. It is important to remember that judges have the responsibility to apply justice in an impartial manner and limit the excesses of political or de facto powers.

This report includes a series of recommendations for Guatemala, including complying with international obligations to guarantee judicial independence and adopting protective measures so that judges and prosecutors can carry out their work without facing undue pressure, threats, and criminalization.



# INTRODUCTION

From August 9 to 11, 2022, a joint delegation by the Latin American Federation of Judges (FLAM) and the International Association of Judges (IAJ) visited Guatemala to verify the state of judicial independence in Guatemala and the ongoing attacks against judges, prosecutors, and other justice operators in the country.

The members of the delegation were: Judge Adriana Orocú, president of FLAM and the Costa Rican Judiciary Association (ACEPTAR); Judge Hermens Darío Lara, member of FLAM and president of the Corporation of Judges and Magistrates of Colombia (CORJUSTICIA); magistrate Walter Barone, president of the Ibero-American group of the IAJ; and Judge Roland Kempfle, IAJ representative and member of the board of directors of the German Association of Magistrates, Judges and Prosecutors (Deutscher Richterbund, DRB).

Members of the joint delegation organized the visit after hearing about the ongoing attacks against justice operators, including judges in Guatemala's High-Risk Courts. We were particularly concerned about the members of the Guatemalan Association of Judges for Integrity (AGJI)[1], because the association is a member of FLAM and IAJ.

During the visit, we heard firsthand accounts of threats, harassment and obstacles that judges and other justice operators face, as well as the reasons for the threats, the actors behind them, and the limited action taken by the State in response.

The members of this delegation wish to thank the contacted individuals and institutions for their collaboration and the participation of their representatives in the meetings that were convened, particularly given the short timeline. For this reason, we also understand that some authorities were not able to meet with us because their schedule was already full.[2]

In this report we present key findings from our visit to the country and we make recommendations to ensure that judges and other justice operators can carry out their work independently, free from undue pressure and threats. In the first part of the report, we include a section on the broader context of the justice system in Guatemala with relevant information about the development of recent events that allows for a greater understanding of the origins of the current situation.

[1]The AGJI was founded on April 18, 2016, and joined the FLAM on May 31, 2022 in São Paulo, Brazil. According to its stated mission, the association is an independent and honest group of judges and justices of the peace that seeks to promote the democratization and independence of judicial authority, while strengthening the principles of dignity and impartiality. The group also seeks to strengthen the efficient and effective administration of justice through the development of the professional association, including judicial, academic-functional, professional, social, cultural and labor development, in a pluralistic space where judges can function on the national and international level to benefit Guatemalan society.
[2]The president of the Constitutional Court, a judge on the Supreme Court and the president of the Judiciary, as well as one additional judge on the Supreme Court.

# 1. CONTEXT – THE JUSTICE SYSTEM IN GUATEMALA

In recent years, the Inter-American Commission on Human Rights (IACHR) and the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Diego García-Sayán, has spoken repeatedly about the serious issues facing the judiciary in Guatemala. In 2021, the IACHR highlighted Guatemala in chapter IV.b of its annual report that lists countries that systematically violate human rights in the region in part due to the alarming number of attacks against prosecutors, judges, and other justice operators, as well as other concerning human rights situations in the country.

The IACHR "observed that the criminalization of magistrates, judges, and other independent justice operators, worsened due to, among other reasons, an alleged lack of independence on the part of the Public Prosecutor's Office, which is said to facilitate the manipulation of criminal law."[3]

The crisis in Guatemala's justice system became more severe after the International Commission against Impunity in Guatemala (CICIG) shut down in 2019. The CICIG worked in the country for twelve years (2007-2019)[4] and made significant progress towards strengthening the Guatemalan justice system. The CICIG contributed to trainings for prosecutors and judges, the specialization of the investigations of the Public Prosecutor's Office, and the creation of the High-Risk Courts. The international commission also promoted important legal reforms to combat impunity.[5]

The CICIG worked with the Office of the Special Prosecutor against Impunity (FECI) of the Public Prosecutor's Office and investigated more than 120 cases involving corruption, illegal campaign financing, organized crime, and other serious crimes. High-ranking government officials and powerful business elites that the justice system had never been able to reach were implicated in many of these cases.

The CICIG and the FECI identified more than 70 complex criminal structures, filed charges against more than 1540 people, and obtained more than 400 convictions. As of July 2019, more than 660 people were still linked to ongoing corruption cases. [6]

La *Línea Case* is one of the most emblematic of these cases. In the case, former President Otto Pérez Molina and former Vice President Roxana Baldetti were accused as leaders in a customs tax fraud scheme.[7] Another relevant case involved illegal campaign financing for the FCN-Nación party; five powerful businessmen were accused of illegally financing the electoral campaign of former President Jimmy Morales (2016-2020).[8]

[3]IACHR. Annual Report 2021. Chapter IV.b Guatemala, paragraph 66.
[4]In 2006, the government of Guatemala signed an agreement with the Secretary General of the United Nations to install the International Commission against Impunity in Guatemala (CICIG) to support investigations into criminal organizations with the characteristics of illegal and clandestine security apparatuses (CIACS).
[5]The legal reforms promoted by the CICIG include a law on weapons and munitions, the jurisdiction of the High Risk Courts, regulations for witness protection, a law to strengthen criminal prosecutions, reforms to the law against organized crime, a law to regulate the services provided by private security firms, a law on asset recovery or seizure, and a law against corruption. Closing report, CICIG, 2019, pages 73-76.
[6]Closing report, CICIG, 2019, page 51.
[7]No-Ficción, Caso La Línea, available in Spanish at: https://www.no-ficcion.com/casos/caso-la-linea.
[8]No-Ficción, Caso Financiamiento Electoral Ilícito FCN-Nación (Fases I, II y III), available in Spanish at: https://www.no-ficcion.com/casos/caso-financiamiento-electoral-ilicito-fcn-nacion



The investigations also extended to the judiciary. In 2018, the Parallel Commissions Case went public, revealing secret negotiations and political agreements set up to ensure the election of certain judges to the Supreme Court and the Court of Appeals in 2014.[9] Members of nominating commissions, politicians, lawyers, and justice officials participated in these negotiations.[10] This problematic process was repeated five years later as noted in the Parallel Commissions 2020 Case. Once again, secret negotiations took place to ensure the election of certain judges to the Supreme Court and the Court of Appeals for the 2019-2024 period[11], providing evidence of the manipulation of election processes for the high courts.

In contrast, during the mandates of former attorneys general Claudia Paz y Paz (2010-2014) and Thelma Aldana (2014-2018), the Public Prosecutor's Office advanced in investigating and prosecuting important transitional justice cases, such as the Ixil genocide case[12] and other cases of serious human rights violations that occurred during the internal armed conflict.

This progress, however, led to a backlash by the government, Congress, and other actors trying to stop the work of the CICIG and the FECI. In 2017, former Guatemalan President Jimmy Morales, declared the head of the CICIG, Commissioner Iván Velásquez, persona non-grata and tried to expel him from the country.[13] In 2018 Morales unilaterally terminated the cooperation agreement with the United Nations that had established and defined the work of the CICIG.[14] Both actions, however, were suspended by Constitutional Court rulings at the time.[15] The court resolutions allowed the CICIG to continue operating in the country until the agreement expired in September 2019. Since then, the power groups affected by CICIG investigations have been trying to co-opt institutions within the justice system. In 2018 President Jimmy Morales appointed María Consuelo Porras as attorney general for the 2018- 2022 term. Porras was later re-appointed by President Alejandro Giammattei for the 2022-2026 term.[16]

The attorney general fired the head of the FECI, prosecutor Juan Francisco Sandoval,[17] and has since removed more than 20 FECI prosecutors in charge of CICIG cases[18], naming replacements whose ability and impartiality has been seriously questioned. Furthermore, she has made major personnel changes in other prosecutor's offices, seriously affecting the investigations in cases involving corruption and organized crime. In 2021, the United States government placed

[9]CICIG, Comunicado 023: Caso Comisiones paralelas, 27 February 2018, available in Spanish at: https://www.cicig.org/comunicados-2018-c/com_023_20180227/.
[10]This case was one of the cases assigned to Judge Erika Aifán, who decided to send it to trial. See: Emisoras Unidas, Envían a juicio al abogado Roberto López Villatoro, 4 December 2018, available in Spanish at: https://emisorasunidas.com/2018/12/04/juicio-roberto-lopez-villatoro/.
[11]No-Ficción, Comisiones Paralelas 2020, 13 July 2021, available in Spanish at: https://www.no-ficcion.com/project/comisiones-paralelas-2020.
[12]Guatemala Human Rights Commission/USA (GHRC), Commemorating the Genocide Sentence; Guatemala's New Attorney General, 10 May 2014, available at: https://ghrcusa.wordpress.com/2014/05/10/commemorating-the-genocide-sentence-guatemalas-new-attorney-general/
[13]Prensa Libre, Presidente Jimmy Morales declara "non grato" a Iván Velásquez y ordena su expulsión, 27 August 2017, available in Spanish at: https://www.prensalibre.com/guatemala/politica/jimmy-morales-declara-non-grato-a-ivan-velasquez/.
[14]Deutsche Welle (DW), "Golpe técnico de Estado": Guatemala contra el mundo, 9 January 2019, available in Spanish at: https://www.dw.com/es/golpe-t%C3%A9cnico-de-estado-guatemala-contra-el-mundo/a-47016774.
[15]DW, Guatemala: Corte Constitucional suspende la salida anticipada de Cicig, 9 January 2019, available at: https://www.dw.com/es/guatemala-corte-constitucional-suspende-la-salida-anticipada-de-cicig/a-47011824.
[16]Prensa Libre, Presidente Alejandro Giammattei elige a Consuelo Porras como fiscal general por cuatro años más, 16 May 2022, available in Spanish at: https://www.prensalibre.com/guatemala/politica/presidente-alejandro-giammattei-elige-a-consuelo-porras-como-fiscal-general-por-cuatro-anos-mas-breaking/.
[17]CNN, Remueven al fiscal anticorrupción de Guatemala Juan Francisco Sandoval, 23 July 2021, available in Spanish at: https://cnnespanol.cnn.com/2021/07/23/remueven-fiscal-anticorrupcion-juan-francisco-sandoval-guatemala-orix/.
[18]Con Criterio, 10 fiscales desplazados de la FECI desde que surgieron indicios de corrupción sobre Giammattei, 16 February 2022, available in Spanish at: https://concriterio.gt/10-fiscales-desplazados-de-la-feci-desde-que-surgieron-indicios-de-corrupcion-sobre-giammattei/.

her on the Engel List of Corrupt and Undemocratic Actors in Central America,[19] and the 2022 Engel List included the current head of the FECI, Rafael Curruchiche, and other justice officials.[20]

Additionally, Guatemala's Congress has spent more than three years without electing judges to serve on the Supreme Court and the Court of Appeals for the 2019-2024 term. The election process was suspended twice due to influence peddling scandals and technical deficiencies in evaluating the candidates. The Constitutional Court suspended the process following the announcement of the Parallel Commissions 2020 Case. The court ordered Congress carry out the election by voice vote and remove any candidates whose honorability had been compromised.[21] Congress, however, has refused to comply with the ruling, which means that the judges previously elected to the Supreme Court and the Court of Appeals have continued in their roles indefinitely.[22]

During our visit to Guatemala, we repeatedly heard that the institutions in the justice system have been co-opted and that those who supported the work of the CICIG and the fight against corruption face systematic persecution. In the following sections we present our observations and the serious damage to justice operators, the independence of the judiciary, and the rule of law.

## 2. VIOLATION OF JUDICIAL INDEPENDENCE

The delegation received information on cases of criminalization against judges, prosecutors, and lawyers who worked with the CICIG; cases of criminalization against judges and prosecutors in charge of transitional justice processes; and cases of criminalization against individuals that have denounced corruption.

As a result of this undue persecution, 24 justice operators have been forced into exile, eight former prosecutors from the FECI are facing criminal proceedings in Guatemala and two prosecutors are in prison. An antejuicio proceeding has been filed against Judge Miguel Ángel Gálvez of High Risk Court B. Judge Galvez has presided over important proceedings in cases of corruption, organized crime, and transitional justice.

### a. Criminalization and improper use of criminal law

The way criminal law is being misused to retaliate against justice officials and operators because of their rulings and prosecutorial work is extremely concerning. The delegation identified the

[19]United States Department of State, Estados Unidos anuncia medidas contra siete funcionarios centroamericanos por socavar la democracia y obstaculizar investigaciones de actos de corrupción, 20 September 2021, available in Spanish at: https://www.state.gov/translations/spanish/estados-unidos-anuncia-medidas-contra-siete-funcionarios-centroamericanos-por-socavar-la-democracia-y-obstaculizar-investigaciones-de-actos-de-corrupcion/.
[20]United States Department of State, Section 353 Corrupt and Undemocratic Actors Report, available at: https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report-2022/.
[21]Prensa Libre, CC otorga amparo al MP y ordena al Congreso a elegir magistrados de CSJ y Apelaciones idóneos, 6 May 2020, available in Spanish at: https://www.prensalibre.com/guatemala/justicia/cc-otorga-amparo-al-mp-y-ordena-al-congreso-a-elegir-magistrados-de-csj-y-apelaciones/.
[22]República.gt, Inicia cuarto año sin renovar Cortes de Justicia en Guatemala, 11 October 2022, available in Spanish at: https://republica.gt/seguridad-y-justicia/inicia-cuarto-ano-sin-renovar-cortes-de-justicia-en-guatemala-2022101118570.



following patterns of criminalization:

- **Filing of false and malicious complaints.** The legal complaints are usually based on a disagreement with the individual's rulings or actions during criminal proceedings. Accusations are filed against a judge or prosecutor, even though the rulings and actions in question have been confirmed by the appeals court of the Supreme Court. Judges are criminalized for their judicial rulings, and prosecutors for their actions as prosecutors. The complaints are filed by individuals involved in corruptions cases and/or transitional justice cases, and the Foundation against Terrorism, even though the latter has no direct participation in the complaint process[23].

- **Improper use of antejuicio proceedings.** We received information about multiple *antejuicio* proceedings that have been filed against judges in the High Risk Courts, in particular Miguel Ángel Gálvez, Pablo Xitumul, Yassmin Barrios, and Erika Aifán. We are concerned that the Supreme Court has accepted these *antejuicio* requests without analyzing the content of the complaint or the legitimacy of the complainants. The court's lack of judgement and protection measures leaves judges in an extremely vulnerable position.

- **Discretionary appointments of investigators in charge of *antejuicio*.** It is concerning that the Supreme Court lacks a public and transparent mechanism for selecting and appointing the judges/magistrates who will be in charge of *antejuicio* investigations. The selection process is supposedly an automated lottery among judges in the appeals courts, but it is worth noting that in the cases of judges Erika Aifán, Pablo Xitumul and Miguel Ángel Gálvez, the Supreme Court has appointed magistrates from the Second Court of Appeals. Magistrate Roaldo Isaías Chávez Pérez, for example, was named as an investigator in the *antejuicio* proceedings against Erika Aifán for the "Parallel Commissions 2020" case,[24] even though he had a conflict of interest because he was secretary of the board of directors of the Institute of Judges of the Judiciary Appeals Court (IMCAOJ), the same entity that filed the criminal complaint against Aifán.[25]

  In another example, Magistrate Roaldo Isaías Chávez Pérez's brother, Luis Adolfo Chávez Pérez, was a congressional representative for the now defunct Renewed Democratic Liberty party (Líder) and he was sentenced to three years in prison for influence peddling, a case that was investigated by the CICIG.[26] Yet the magistrate was appointed as an investigator in antejuicio proceedings against Judge Miguel Ángel Gálvez[27].

[23]The following section describes the role of the Foundation against Terrorism in more detail.
[24]Prensa Libre, Designan a nuevo juez pesquisidor para conocer antejuicio presentado contra jueza Ericka Aifán, 9 October 2021, available in Spanish at: https://www.prensalibre.com/guatemala/justicia/designan-a-nuevo-juez-pesquisidor-para-conocer-antejuicio-presentado-contra-jueza-ericka-aifan-breaking/
[25]The 2020 complaint against former judge Erika Aifán was filed by Wilber Castellanos, president of the Instsitute of Judges of the Judiciary Appeals Court (IMCAOJ), and judge Roaldo Isaías Chávez was the secretary of the Institute from 2021-2022. See: La Hora, Pesquisidor de juez Gálvez será el mismo que conoció antejuicio de Aifán, 6 July 2022, available in Spanish at: https://lahora.gt/nacionales/oscar-canel/2022/07/06/pesquisidor-de-juez-galvez-sera-el-mismo-que-conocio-antejuicio-de-aifan/.
[26]CICIG, Comunicado 038: Condenan a exdiputado Luis Chávez, 22 May 2017, available in Spanish at: https://www.cicig.org/comunicados-2017-c/condenan-a-exdiputado-luis-chavez/.
[27]Prensa Comunitaria, Juez Gálvez recusa a magistrado Roaldo Chávez por vínculos con la Fundación contra el Terrorismo, 27 September 2022, available in Spanish at: https://www.prensacomunitaria.org/2022/09/juez-galvez-recusa-a-magistrado-roaldo-chavez-por-vinculos-con-la-fundacion-contra-el-terrorismo/.

- **Arbitrary detention and abuse of pre-trail detention.** Former prosecutor of the FECI of Quetzaltenango, Virginia Laparra, has been imprisoned in deplorable conditions for more than eight months. Our delegation considered aspects of the process to be arbitrary and observed the abuse of pretrial detention. Former prosecutor Laparra is being persecuted for having filed administrative complaints against a criminal court judge in Quetzaltenango, Lesther Castellanos.[28]

We also received information about expropriation requests that have been filed against judges and prosecutors. The requests seek to deprive them of their property and personal savings earned through many years of work.

These acts of criminalization are not just isolated events but appear to be part of a well-coordinated strategy carried out by certain public officials and representatives of different sectors seeking to obstruct justice and act with complete impunity.[29] This criminalization leads to the institutional weakening of the justice system. The intent is to maintain a justice system that is docile and controlled by political power. The strategy of criminalization also seeks to ensure prosecutors are obedient and scared. That is to say, the cases of criminalization against judges in the High-Risk Courts and former prosecutors of the FECI seek to intimidate all other judges and prosecutors.

According to annual reports, attacks on human rights defenders and justice operators increased during the government of Otto Pérez Molina (2012-2015) and decreased considerably in 2015 and 2016 after his resignation. In 2017, however, the number of attacks increased once again when former President Jimmy Morales began to promote the expulsion of the CICIG.[30] Since then, the number of attacks against public officials and justice operators has remained steady.

According to representatives of the Unit for the Protection of Human Rights Defenders (UDEFEGUA), from January to July of this year alone, there were 589 reported attacks against human rights defenders, of which 272 were attacks against judges, prosecutors, and others justice operators.

The delegation are particularly concerned that colleagues from the Guatemalan Association of Judges for Integrity (AGJI) face constant attacks and smear campaigns because of the work they do to defend judicial independence. In March of this year, former Judge Erika Aifán resigned from the High-Risk Court because of false accusations, threats, and undue pressure against her, and because she considered the measures taken to protect her life and her integrity insufficient. Facing imminent criminalization, she did not believe it would be possible to defend herself with a guarantee of due process. The former judge also served as president of the AGJI. Since resigning, she has lived in exile in the United States.

It is also very important to highlight the cases of High Risk Court Judge Miguel Ángel Gálvez and Judge Iris Yassmin Barrios Aguilar, currently presiding over the High Risk Sentencing Court. Because of the cases they have heard in both the investigative and trial

[28]La Lista, La principal fiscal anticorrupción de Guatemala es encarcelada, mientras la élite se crece, 1 September 2022, available in Spanish at:https://la-lista.com/the-guardian/2022/09/01/la-principal-fiscal-anticorrupcion-de-guatemala-es-encarcelada-mientras-la-elite-se-crece.
[29]In 2008, as the CICIG started operating, an estimated 97% of reported crimes in Guatemala remained in impunity. From 2011-2017, that percentage had already gone down to 92%-94%. See: CICIG, Sistema Integrado de Justicia, Presentation 2019, slide 5, available in Spanish at: https://www.cicig.org/wp-content/uploads/2019/06/Presentacion_GIZ_SIJ_2019.pdf.
[30]El País, La crisis en Guatemala se debe a haber arrinconado a las mafias, 5 September 2018, available in Spanish at: https://elpais.com/internacional/2018/09/05/actualidad/1536173002_162721.html.



"The recently announced president of the AGJI, @aifan_erika flees preemptively, facing an arrest warrant against her. It reminds me of a song that more or less goes, "of the 9 that were left, one fled, as long as they give me 8." @carlos_ruano


(Links to article about Judge Erika Aifán assuming the presidency of the AGJI with an circle around her in the picture.)

phases, and because of the high profile of those involved in these cases, the two judges have become targets of numerous attacks, threats, and campaigns to discredit them. Both are currently at imminent risk of criminalization. The judges' independent and comprehensive work has positioned them as symbols against impunity and many criminals are uncomfortable with their continued presence in the judiciary.

Judge Carlos Giovanni Ruano is in a similar situation. He is under threat because he filed a complaint against Supreme Court Magistrate Blanca Aida Stalling in 2017. According to the information we received, the complaint stated that the magistrate had summoned Judge Ruano to her office to present information in the case against her son Otto Fernando Molina Stalling (implicated in the IGSS-PISA case[31]) and to advocate for him, since Judge Ruano was scheduled to preside over the hearings. Judge Ruano took the precaution of recording the conversation with Judge Stalling in order to provide proof that he was summoned to the meeting and that he did not compromise his work or accept her proposal.[32] As a result of the complaint filed by Judge Ruano, Magistrate Stalling was prosecuted for influence peddling.

On June 29, 2022, the case against Magistrate Stalling was dismissed. Since then, the harassing messages to Judge Ruano have intensified. Additionally, Blanca Stalling requested and obtained her reinstatement as a magistrate.[33] This is an objective sign of danger given the potential subordination of the judiciary to the Supreme Court.

According to the cases presented to the delegation, in addition the High Risk Court judges, other groups have been or are being attacked for carrying out their work, including:

- Independent journalists and critics of government actions
- Community leaders, activists, and human rights defenders
- Defense lawyers, especially Indigenous lawyers who also face other forms of discrimination because of their ethnicity and/or because they are women

[31]In this case, the investigation centered on the Guatemalan Social Security Institute (IGSS) contracts with the company Droguería Pisa de Guatemala to provide kidney dialysis for high-risk patients, despite the fact that it had been declared in court that the company lacked the needed infrastructure. Authorities investigated the possible payment of a bribe in exchange for the contract. According to estimates, as a result of the service provided by the company, more than 50 people died and another 150 experienced worsening illness.
[32]La Hora, AUDIO: el día que Stalling fue a pedirle al juez por la medida de su hijo, 13 July 2022, available in Spanish at: https://lahora.gt/nacionales/oscar-canel/2022/07/13/audio-el-dia-que-stalling-fue-a-pedirle-al-juez-por-la-medida-de-su-hijo/.
[33]La Hora, OJ reinstalará a Stalling; recibirá salarios dejados de percibir, 15 September 2022, available in Spanish at: https://lahora.gt/nacionales/engelberth-blanco/2022/09/15/oj-reinstalara-a-stalling-recibira-salarios-dejados-de-percibir/.

- Prosecutors and former prosecutors who are or were in charge cases involving significant corruption or serious human rights violations, including two former attorneys general, Thelma Aldana and Claudia Paz y Paz.
- Former magistrates of the Constitutional Court
- Human Rights Ombudsman Jordán Rodas Andrade (who was still in office at the time of our visit).

In the next section we describe other forms of attack and harassment in more detail.

## b. Harassment and threats against public officials and justice operators

In addition to criminalization, other forms of attack are also used to intimidate, threaten, and coerce judges and prosecutors. Among these other forms of attack, we identified the following:

- **Death threats, threats of assault, or threats of criminal prosecution.** The threats usually directly target the judges or justice operators, but sometimes extend to family or friends as well. The threats are disseminated in the media or as part of smear campaigns.
- **Surveillance and monitoring** by armed individuals and/or vehicles with tinted windows and no identifying information.
- **Leaks involving confidential information** from investigations or proceedings. The information is published through anonymous social media accounts or on the internet.
- **Assassinations.** In 2017, a judge was assassinated in the eastern state of Izabal and another judge was assassinated in the northern state of Peten in 2020. Judge Iris Yassmin Barrios survived an attack in 2001, when a bomb was launched into her house. In recent years, dozens of journalists, and human rights defenders[34] have been murdered.

Dr Blanca Stalling, as a person of the law, you cannot allow Carlos Ruano to remain in impunity after the hell you and your family went through thanks to him. You have the moral obligation, in addition to the legal obligation, to press charges against this servile judge.


This judge who has been bought off by foreign interests MUST face justice

[34]According to a report by UDEFEGUA, "The situation of people, organizations and communities defending human rights in Guatemala, 2021", 11 human rights defenders (8 men and 3 women) were murdered in 2021. According to the 2020 report "Common Country Analysis, Key Statistics (United Nations), 14 human rights defenders were murdered between January and September in 2020.



## c. Smear campaigns and attacks on social media

During our visit, we were able to verify systematic harassment on social media that involves spreading offensive and threatening messages with the intent of sowing fear and emotional upheaval. The published messages seek to damage the dignity, honor, and professional reputation of justice officials and operators. Defamation campaigns are spread on Twitter, Facebook and other social networks controlled by groups that seek impunity. The following messages illustrate the level of aggression on social media.

The messages are sometimes published on personal accounts, but there are also companies, or "netcenters" as they are called in Guatemala, dedicated to posting and disseminating the messages.

The most concerning part, however, is that the authorities do not investigate the individuals behind these accounts that are publishing confidential information on criminal case proceedings and the actions of the Public Prosecutor's Office, and/or posting public threats against judges and prosecutors.

Ericka [sic] Aifán has fallen, unlike the honorable Judge Miguel Ángel Gálvez. Stop playing the victim, hommie, it didn't work for Aifán. You will be subjected to the rule of law.


With this card, I almost have Bingo.

# 3. ACTORS DESTABILIZING THE JUSTICE SYSTEM

During our visit, we also received information about the actors behind the criminalization of and attacks on judges and justice operators. There are actors both within and outside of the state apparatus that seem to coordinate actions to obstruct justice and attack administrators and justice operators that have worked on cases involving corruption and transitional justice.

## a. Internal actors within the justice system

Attorney General María Consuelo Porras was often mentioned in our meetings as one of the actors in the destabilization of the justice system. Several interviewees noted that since she took office in 2018, the fight against corruption and impunity has been weakened in the Public Prosecutor's Office. Attorney General Consuelo Porras fired the head of the FECI, Juan Francisco Sandoval, and has fired more than 20 other prosecutors who were in charge of key offices, such as the Office of the Special Prosecutor for Human Rights, which is in charge of investigating transitional justice cases.[35]

There is a widespread perception that the attorney general has embarked on a policy of criminalization and retaliation against former FECI prosecutors, former CICIG officials and independent judges. Examples of this include the arrest warrants against the former head of the FECI, Juan Francisco Sandoval, who is living in exile in the United States; the criminal proceedings against eight former FECI prosecutors; and the arrests of former prosecutors Virginia Laparra and Samari Gómes. In addition, the attorney general requested *antejuicios* against judges Erika Aifán and Pablo Xitumul. The current attorney general was appointed in 2018 by former President Jimmy Morales and re-appointed in 2022 by President Alejandro Giammattei for a second term.

The Supreme Court was also mentioned as an actor in the destabilization of the justice system. According to reports we received, the current Supreme Court was elected for the 2014-2019 term in a problematic process, yet the term has been extended for more than three years because Congress has repeatedly refused to elect magistrates to the Supreme Court and the Court of Appeals for the 2019-2024 term. Congress is reluctant to comply with the Constitutional Court resolution ordering Congress to elect candidates that are not linked to the "Parallel Commissions 2020" case and ordering Congress to hold a voice vote.

The term extension for the current Supreme Court and Court of Appeals has weakened the justice system and undermined the credibility of the judicial branch. According to the information we received, the current magistrates and judges have rejected almost all the requests for antejuicio proceedings against congressional representatives and public officials accused of corruption, while they have accepted the requests for antejuicio proceedings against independent judges, like the High-Risk Court judges.

[35]Human Rights Watch, Guatemala: Fiscal general despide arbitrariamente a fiscales, 14 July 2022, available in Spanish at: https://www.hrw.org/es/news/2022/07/14/guatemala-fiscal-general-despide-arbitrariamente-fiscales.
La Hora, Siguen los despidos en el MP: Porras destituye a 3 fiscales de trayectoria, 30 June 2022, available in Spanish at: https://lahora.gt/nacionales/oscar-canel/2022/06/30/siguen-los-despidos-en-el-mp-porras-destituye-a-3-fiscales-de-trayectoria/.



The Supreme Court has even heard and rejected *antejuicio* requests against their own members. In June 2021, the FECI filed a request for an *antejuicio* proceeding against eight magistrates on the Supreme Court, a magistrate on the Constitutional Court, a magistrate on the Supreme Electoral Tribunal, and 13 magistrates from the Court of Appeals for having negotiated candidacies for the high courts in the "Parallel Commissions 2020" case. Rather than recusing themselves from the hearings, the Supreme Court rejected the *antejuicio* requests in *limine*.[36]

We recently learned that Supreme Court Magistrate Blanca Stalling was reinstated after the criminal case against her for influence peddling was closed. This decision has been highly criticized by many sectors of society for numerous reasons, including the fact that the evidence against her exists, that the period of the current court ended in 2019, and that she will receive compensation totaling more than five million quetzals (about US$641,000).

## b. External actors

External actors whose actions are contributing to the weakening of the justice system include the Association of Military Veterans of Guatemala (AVEMILGUA), the Pro-Patria League, Immortal Guatemala, and the Foundation against Terrorism. The latter has filed numerous complaints against prosecutors, judges, magistrates, and other justice operators, and repeatedly uses social media to threaten and intimidate justice officials.

The Foundation against Terrorism is mostly made up of former members of the military and their relatives.[37] Several of their members have been sanctioned by the United States government, precisely for obstructing justice.[38] In recent years, the Foundation has gained a lot of influence and has contributed significantly to the destabilization of the judiciary. The Foundation not only seeks to obstruct justice, but also perversely uses criminal law to criminalize prosecutors and independent judges.

Lastly, we also received information about the role of business elites involved in corruption cases that have a vested interest in criminalizing justice operators for revenge. For example, the CICIG and the FECI discovered how a group of businessmen contributed more than 1 million dollars to the accounts of the FCN-Nación political party that led Jimmy Morales to the presidency. Likewise, the CICIG and the FECI revealed the "Construction and Corruption" case that sought accountability for the overvaluation of public construction projects and bribes paid by construction companies to public officials.[39] Several of these businessmen have a vested interest in weakening and controlling the justice system to maintain their privileges[40].

[36]No-Ficción, Comisiones paralelas: la autoprotección de una CSJ corrupta, 17 November 2021, available in Spanish at: https://www.no-ficcion.com/project/comisiones-paralelas-csj-corrupta.
[37]In the document of incorporation (escritura constitutiva), dated July 5, 2013, the following people are named as members of the Foundation against Terrorism: Ricardo Rafael Méndez-Ruiz Valdés; Oscar German Platero Trabanino; Mario Efraín Avalos Mejía; Carlos Leopoldo Alvarado Palomo; Raúl Amílcar Falla Ovalle; Edgar Danilo Ruiz Morales; and Luis Estrada Valenzuela. See: Guatemala: El haz y el envés de la impunidad y el miedo. Las estrategias militar-empresarial-gubernamental contra la Justicia y la Resistencia, Guatemala, 2014, page 97, available in Spanish at: www.albedrio.org/htm/documentos/GuatemalaImpunidadMiedo.pdf.
[38]United States Department of State, Section 353 Corrupt and Undemocratic Actors Report, available at: https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report/.
[39]No-Ficción, El punto final de las élites contra la CICIG, 25 February 2021, available in Spanish at: https://www.no-ficcion.com/project/punto-final-elites-cicig.
[40]See numerous cases of illegal campaign financing at: https://www.cicig.org/casos/.

# 4. GOVERNMENT RESPONSE

### a. Failure to comply with international protection measures

It is concerning that the State of Guatemala does not fully comply with the precautionary measures granted by the IACHR in favor of judges and prosecutors who are at risk. These measures not only seek to protect the personal integrity of justice officials and their families, but also include actions to ensure respect for their judicial independence and to prevent them from being persecuted because of their rulings or the decisions they make in the exercise of their role.

It is also concerning that the State does not comply with the recommendations of the international human rights organizations in relation to judicial independence and the autonomy of the Public Prosecutor's Office. Reports by the United Nations Human Rights Office (OHCHR) on the human rights situation in Guatemala have included important recommendations on judicial independence, the fight against impunity, the election of magistrates, and transitional justice.

The State, however, usually limited itself to sending general information to international human rights organisms through official channels, without appropriately implementing the recommendations and without guaranteeing the independence of the judiciary.

### b. Lack of action by the Public Prosecutor's Office

The lack of action by the Public Prosecutor's Office in investigating the threats and attacks against judges and justice operators is also concerning. In the meeting we had with the Office of the Special Prosecutor for Crimes against Justice Operators, we asked about the status of investigations related to the threats and attacks against Judge Miguel Ángel Gálvez, one of the best-known cases in the country. They told us that there was no ongoing investigation, that they did not have knowledge of the crimes, and that they could not act because the judge had not filed a formal complaint about the threats.

It is concerning that the Public Prosecutor's Office does not act ex officio in these cases, especially since the threats clearly seek to obstruct justice and attack judicial independence. Rather than acting ex officio, the investigators wait for judges to denounce the crimes, despite the fact that the threats and attacks are public knowledge because they are published in the press and posted on social media.

### c. Loss of guarantees to ensure the independence of the judiciary

During our visit we were able to verify that there are insufficient guarantees for the functioning of the judiciary in an impartial and independent manner because the State does not guarantee protection for judges and justice operators who are facing attacks and undue pressure from outside individuals and groups. The State institutions are not fully complying with their responsibility to protect the independence of judges. On the contrary, we see that, in some cases, these institutions have left judges in extremely vulnerable situations.



# 5. THE EFFECTS ON VICTIMS AND THE RULE OF LAW

The acts of criminalization and systematic attacks posted on social media are causing deep harm to both those who are directly affected and their families. They often have to defend themselves against multiple malicious complaints and debunk the lies spread on social media in order to defend their honor and their work.

According to the information we received, about 24 former prosecutors and judges have been forced into exile due to criminalization and systematic attacks. This includes former Constitutional Court judges, former Court of Appeals Judge Claudia Escobar, former High Risk Court Judge Erika Aifán, former Attorneys General Thelma Aldana and Claudia Paz y Paz, former FECI prosecutor Juan Francisco Sandoval, six other FECI prosecutors, three chief prosecutors, among others.

Most of the individuals living in exile are in the United States. In many cases, their living situation is not the most suitable due to language barriers, work limitations, and the high cost of living. Furthermore, they have been separated from their families.

According to the people we met with who have been directly affected, however, the biggest concern is that there is no guarantee in Guatemala to the right to defense and to an impartial and fair proceeding. Some of their cases have even been put on hold, limiting their right to defense.

The abuses committed in certain cases are concerning, including the cases of former FECI prosecutor Virginia Laparra, former FECI prosecutor Siomara Sosa, and former CICIG lawyer Leily Santizo. Virginia Laparra, for example, has been in pre-trial detention for more than eight months. Siomara Sosa appeared before a judge on numerous occasions to give herself up to the authorities, and yet she was arrested, and raids were carried out at her workplace and her mother's house (an 80-year-old woman without any knowledge of the case). In both cases, the hearings have been repeatedly delayed, prolonging their time in prison.

It is worth noting that Judge Geisler Smaille Pérez Domínguez, of the Third Criminal Court, is in charge of both cases. The FECI filed an *antejuicio* against Judge Pérez Domínguez in relation to the "Parallel Commissions" case and he was also included in the United States government's Engel List for undermining justice and democracy.[41] The same judge presided over hearings in cases against assistant prosecutors Paola Mishelle Escobar, Alis Morán and Willy López Racanac.

Our delegation also learned about the situation of former prosecutors in pre-trial detention in the Mariscal Zavala military prison. Five former prosecutors and CICIG officials were held at the same time in an isolated room in deplorable conditions, while former public officials and businessmen accused of corruption detained in the same prison enjoy certain privileges.[42]

[41]United States Department of State, Section 353 Corrupt and Undemocratic Actors Report, available at: https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report-2022/.
[42]Agencia Ocote, No ver la luz, El caso de Virginia Laparra, 31 May 2022, available in Spanish at: https://www.agenciaocote.com/blog/2022/05/31/no-ver-la-luz-el-caso-de-virginia-laparra/.

The effects of criminalization are extensive, also generating anxiety and affecting the families of those who have been criminalized. Individuals who have been criminalized are aware that their work, their freedom, and their lives are at stake. Beyond the personal impact, these individuals are concerned about the serious damage caused to the justice system and democracy in the country.

## CONCLUSIONS

During our visit, our delegation was able to verify the systematic attacks against judges, prosecutors, and former CICIG officials that worked on significant corruption cases and cases involving human rights violations that occurred during the internal armed conflict. Criminal law is being misused to criminalize judges and justice operators in retaliation for the work they carried out in an independent manner.

We are particularly concerned about the attacks against Judge Yassmin Barrios, Judge Miguel Ángel Gálvez, and Judge Carlos Ruano, as well as the ongoing attacks against members of the Guatemalan Association of Judges for Integrity (AGJI) defending judicial independence.

The inaction of the Public Prosecutor's Office is worth noting, as the institution has failed to investigate the actors that are destabilizing the justice system, using attacks against judges and prosecutors, and even making public threats against judges and justice operators.

Our delegation is concerned about the State's consistent failure to comply with international regulations and standards regarding reinforced guarantees to ensure judicial independence and protection from removal, as well as the lack of effective implementation of precautionary measures ordered by the Inter-American Human Rights System in favor of judges and prosecutors. Several justice operators have had to leave the country and seek refuge abroad, due to criminalization and the lack of protection provided by the State.

The members of the delegation consider that there are no minimum guarantees for the exercise of judicial independence in Guatemala right now. This lack of guarantees could generate more impunity and instability in the country. It is important to remember that the judiciary has the responsibility to guarantee impartial justice and limit the excesses of political or de *facto powers*.

## RECOMENDACIONES

To the people of Guatemala: Build awareness about the serious issues facing the justice system and provide support for impartial and independent judges.



To the Supreme Court: Comply with the duty to defend the external and internal independence of the judicial system, and provide institutional support to judges, guaranteeing their time in the role and adopting measures so that they can provide justice free from undue pressure, threats, and attacks.

To Guatemalan judges: Continue to strengthen judicial associations as a tool for the defense and protection of judicial independence.

To the Public Prosecutor's Office: Stop the persecution and criminalization of judges and prosecutors and act ex officio against those responsible for the attacks against justice officials and operators. The Public Prosecutor's Office must investigate the participation of members of the Foundation against Terrorism and other similar organizations in attacks against administrators and justice operators.

To Guatemalan Congress: Act as soon as possible to name the next judges to the Supreme Court and the Court of Appeals. The process has already been delayed for more than three years, causing serious damage to the justice system.

We urge the three branches of government to guarantee the independence of the judiciary, and to effectively comply with protection measures ordered by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights in favor of judges and other justice operators who are at risk. These measures guarantee their personal integrity and the objective conditions needed to provide justice free from undue pressure and spurious criminalization proceedings.

Lastly, we call on international human rights organizations and the international community to ensure that Guatemala complies with international obligations, democratic principles, and respect for judicial independence.

# ATTACKS ON JUDICIAL INDEPENDENCE IN GUATEMALA





*Grupo Iberoamericano – IBA*
International Association of Judges - IAJ
*promoting an independent judiciary worldwide*

**PRONUNCIAMIENTO SOBRE EL PEDIDO DE JUICIO POLÍTICO CONTRA MAGISTRADOS DE LA CORTE SUPREMA DE JUSTICIA DE LA REPÚBLICA ARGENTINA**

**LA UNIÓN INTERNACIONAL DE MAGISTRADOS – UIM** es una organización internacional profesional y apolítica, fundada en 1953, que reúne asociaciones nacionales de jueces de 94 países y cuyo principal objetivo es salvaguardar la independencia de las autoridades judiciales, la que constituye requisito esencial de la función judicial y una garantía del respeto por los derechos humanos y la libertad.

**EL GRUPO IBEROAMERICANO DE LA UIM EXPRESA SU PREOCUPACIÓN** ante la noticia de que el Excmo. Señor Presidente de la República Argentina impulsa un juicio político a Ministros de la Corte Suprema de Justicia de la Nación, en virtud del contenido de uno de sus fallos, lo que indica un intento de influir en decisiones jurisdiccionales por parte de agentes externos al Poder Judicial, representando una amenaza a la independencia judicial y un gran riesgo para el Estado Democrático de Derecho y, por lo tanto, para la Democracia.

**RECUERDA** que, según prevé el artículo 7-1 del Estatuto Universal del Juez adoptado por la UIM, "*Salvo en caso de malicia o negligencia grave, constatada en una sentencia definitiva, no se puede entablar acción disciplinaria contra un juez como consecuencia de una interpretación de la ley o de la valoración de hechos o de la ponderación de pruebas, realizada por él / ella para determinar casos.*
*Los procedimientos disciplinarios se llevarán a cabo bajo el principio del debido proceso legal. El juez debe tener acceso a los procedimientos y beneficiarse de la asistencia de un abogado o de un compañero. Las sentencias disciplinarias deben ser razonadas y pueden ser impugnadas ante un órgano independiente.*

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*Grupo Iberoamericano – IBA*
International Association of Judges - IAJ
*promoting an independent judiciary worldwide*

*La acción disciplinaria contra un juez sólo puede ser tomada cuando está prevista por la ley preexistente y en cumplimiento de reglas de procedimiento predeterminadas. Las sanciones disciplinarias deben ser proporcionadas".*

**REITERA** el llamamiento al respeto de la división de poderes en todas las naciones, como contrapeso necesario para la existencia y sano funcionamiento del Estado de Derecho.

**EXHORTA** a la más alta autoridad de la Nación reconsiderar su decisión de impulsar el referido juicio político y a los representantes del Poder Legislativo que no den seguimiento a dicho intento de intimidar a miembros del Poder Judicial.

Dado en São Paulo, Brasil, el 07 de enero de 2023.

**Magistrado WALTER BARONE**
Presidente Grupo IBA-UIM

**Magistrado FRANCISCO SILLA**
Vicepresidente Grupo IBA-UIM

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**STATEMENT ON THE INVASION OF THE SUPREME COURT OF JUSTICE, THE PALACE OF GOVERNMENT AND THE PARLIAMENT OF BRAZIL**

**THE INTERNATIONAL ASSOCIATION OF JUDGES – IAJ** is a professional and non-political international organization, founded in 1953, which brings together national associations of judges from 94 countries and whose main aim is to safeguard the independence of the judiciary, which is an essential requirement of the judicial function, guaranteeing human rights and freedom.

**THE IBERO-AMERICAN GROUP OF THE IAJ EXPRESSES REJECTION** of the invasions of the Supreme Court, the Palace of Government and the Parliament of Brazil, and the depredations of their facilities, which took place today in the Capital of the country.

**EMPHASIZES** that the deplorable scenes of vandalism witnessed today represent a terrible attack on public property in Brazil, as well as a serious attack on the Rule of Law, as well as on democracy itself.

**REITERATES** the call to respect the constitutional order.

Sao Paulo, Brazil, January 8th, 2023.

**Justice WALTER BARONE**
President of the IBA Group-IAJ

**Justice FRANCISCO SILLA**
Vice President of the IBA Group-IAJ

Rua Tabatinguera, 140, Sobreloja, CEP 01020-901, São Paulo, Brasil, Teléfono: +55113295-5171

# AFR







# DECLARATION

Les associations membres du Groupe Africain de l'Union Internationale des Magistrats, présentes à la réunion annuelle du Groupe à Bamako (Mali) du 20 au 24 Février 2023, faisant référence à la révocation unilatérale et collective de 57 magistrats tunisiens par le Président de la République de la Tunisie en Juin 2022 par le décret 516 sans aucune procédure disciplinaire et avec l'interdiction de toute sorte de recours contre la décision de révocation, violant une fois de plus le principe d'indépendance de la justice, fondement de l'Etat de droit et garantie indispensable des droits et libertés de chacun.

Le Groupe Africain, face à la crise profonde et continue de la magistrature tunisienne, et devant les violations graves des règles élémentaires caractérisant l'État de Droit et l'atteinte intolérable au principe de la séparation des pouvoirs, notamment par le refus d'exécuter les jugements rendus par le Tribunal Administratif en faveur des magistrats révoqués dans l'irrespect total de l'État de droit et des normes internationales de l'indépendance des magistrats et le recours par le pouvoir exécutif à des accusations pénales envers les magistrats révoqués pour camoufler l'irrespect des décisions judiciaires, et face à la non reconnaissance des règles internationalement consacrées en matière d'indépendance de la justice et les procédures disciplinaires contre les magistrats par une procédure équitable, impartiale, susceptible de recours et non contrôlée par le pouvoir exécutif.

Les associations membres du Groupe Africain de l'Union Internationale des Magistrats réunies à Bamako expriment leur solidarité aux magistrats tunisiens dans leur lutte pour un pouvoir judiciaire indépendant, intègre et garant des droits et libertés selon les normes internationales ;

- Elles dénoncent, à l'instar des précédentes déclarations du groupe africain et de l'UIM, les différentes violations commises ;

- Elles exhortent le pouvoir exécutif au respect des engagements de la Tunisie selon les traités ratifiés en rapport avec les principes de l'indépendance du pouvoir judiciaire

- Elles exhortent l'Etat Tunisien à respecter les jugements judiciaires en faveur des magistrats révoqués et de s'abstenir de toute mesure destinée à camoufler l'irrespect de ces décisions

- Elles invitent l'Etat Tunisien à arrêter immédiatement les poursuites pénales infondées initiées à l'encontre des magistrats révoqués suite aux jugements de sursis d'exécution déclarés

- Elles demandent, en outre, au Pouvoir Exécutif d'arrêter les poursuites disciplinaires et pénales contre les magistrats en raison de l'exercice pacifique de leurs droits syndicaux et les magistrats luttant pour un pouvoir judiciaire indépendant, intègre et garant des droits et libertés selon les normes internationales.

Fait à Bamako, le 22 Février 2023

## 2022 Mission of Christophe Regnard in Tunisia

INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI

Tours, le 11 juillet 2022

**Rapport de Christophe REGNARD**
**Président d'honneur de l'UIM**

**Suite à sa mission à Tunis du 5 au 7 juillet 2022**

**1 - Contexte de la visite**

Mi-juin 2022, dans les suites des événements mettant en cause la justice tunisienne depuis le début de l'année 2022, l'association des magistrats tunisiens (AMT) a proposé à Jose IGREJA MATOS, Président de l'Union Internationale des Magistrats (UIM-IAJ), qu'une délégation de l'UIM se rende à Tunis à court délai pour apprécier sur place la dégradation continue de la situation de la Justice en Tunisie.

A la demande de Jose IGREJA MATOS, je me suis rendu à Tunis du 5 au 7 juillet 2022.

**2 - Présentation de l'AMT**

L'AMT[1] est membre de l'UIM depuis la réunion de Rome en 1961. Elle est à ce titre l'association la plus ancienne du continent africain ayant rejoint l'UIM[2].

L'association est la principale organisation de juges et procureurs du pays, puisque 80% des 2500 magistrats tunisiens sont adhérents de l'AMT.

Elle a été un interlocuteur très important des pouvoirs publics et des organisations internationales depuis la révolution de 2011 et se bat depuis lors avec constance pour faire évoluer la législation tunisienne afin de rendre la Justice toujours plus indépendante et de promouvoir la mise en place des droits humains en Tunisie (notamment dans le cadre des réflexions qui ont été menées sur la justice transitionnelle).

Elle est en cela tout à fait en phase avec les buts de l'UIM tels qu'ils apparaissent dans l'article 1er de ses statuts :
*« a) sauvegarder l'indépendance du Pouvoir Judiciaire, condition essentielle de la fonction juridictionnelle et garantie des droits et libertés humains;*
*b) sauvegarder la position constitutionnelle et morale du Pouvoir Judiciaire »*[3]

[1] https://fr-fr.facebook.com/AmtTunisie/

[2] https://www.iaj-uim.org/fr/chronology-of-the-admission-2/

[3] https://www.iaj-uim.org/fr/statut/



**3 – Situation actuelle de la démocratie et la Justice en Tunisie**

3-1 – La Constitution du 27 janvier 2014

Dans les suites de la révolution de 2011, une nouvelle constitution a été promulguée le 27 janvier 2014, après de longs débats unissant toute la société tunisienne, et auxquels l'AMT a pris part.

Dans le préambule de cette constitution, on peut lire :

*« Posant les fondements d'un régime républicain démocratique et participatif, dans le cadre d'un État civil où la souveraineté du peuple s'exerce, à travers l'alternance pacifique au pouvoir, par des élections libres ; Un régime fondé sur le principe de la séparation des pouvoirs et sur leur équilibre, où la liberté d'association, conformément aux principes de pluralisme, de neutralité de l'administration et de bonne gouvernance, est la conditions de la compétition politique ; Où l'État garantit la suprématie de la loi, les libertés et les droits de l'Homme, l'indépendance de la justice, l'égalité en droits et en devoirs entre les citoyens et les citoyennes, et l'égalité entre les régions »*

Le chapitre II fixe l'ensemble des droits et libertés et reconnus aux citoyens tunisiens.

Le chapitre V concerne le pouvoir judiciaire.

Selon l'article 102, « *Le pouvoir judiciaire est indépendant. Il garantit l'instauration l'administration de la justice, la primauté de la Constitution, la souveraineté de la loi et la protection des droits et libertés. Le magistrat est indépendant. Il n'est soumis dans l'exercice de ses fonctions qu'à la loi* ».

Selon l'article 104, *« Le magistrat bénéficie de l'immunité judiciaire et ne peut être poursuivi ou arrêté tant que cette immunité n'a pas été levée. En cas de flagrant délit de crime, il peut être arrêté et le Conseil de la magistrature dont il relève doit en être informé pour se prononcer sur la demande de levée de l'immunité* ».

Selon l'article 107, « *Le magistrat ne peut être muté sans son accord. Il ne peut être révoqué ni suspendu de ses fonctions ni subir une sanction disciplinaire que dans les cas et selon les garanties déterminées par la loi et par décision motivée du Conseil supérieur de la magistrature* ».

Selon l'article 109, « *Toute ingérence dans le fonctionnement de la justice est proscrite* ».

L'article 112 instaure un Conseil Supérieur de la Magistrature, comprenant en son sein 3 formations (un conseil de la juridiction judiciaire, un conseil de la juridiction administrative et un conseil de la juridiction financière). Ce conseil a pleine compétence en matière de carrière, de nomination, de promotion et de discipline. Chaque organe se compose pour ses deux tiers de magistrats en majorité élus et d'autres nommés ès qualités, et pour le tiers restant de non-magistrats indépendants et spécialisés.

Une cour constitutionnelle est enfin instaurée par l'article 119 (Faute d'accord au parlement sur les membres, elle n'a néanmoins jamais pu se mettre en place).

Le chapitre VIII fixe les règles de révision de la Constitution. Le projet d'initiative présidentielle ou législative, doit être soumis pour avis à la cour constitutionnelle.

Selon l'article 144, « *la révision est adoptée à la majorité des deux tiers des membres de l'Assemblée des Représentants du Peuple. Le Président de la République peut, après approbation des deux tiers des membres de l'Assemblée, soumettre la révision au référendum ; elle est alors adoptée à la majorité des votants* ».

3-2 – De la suspension à la dissolution de l'assemblée des représentants du peuple

Le président tunisien, Kaïs Saïed (élu en octobre 2019), a décidé le 25 juillet 2021 de geler les travaux du Parlement pour 30 jours et de s'octroyer le pouvoir exécutif, en application des dispositions de l'article 80 de la Constitution[4]. Face à la contestation des parlementaires (certains ont qualifié cette situation de « *coup d'état* »), les forces militaires ont empêchés les parlementaires d'accéder au bâtiment.

Selon la presse : *« À l'issue d'une réunion d'urgence au Palais de Carthage avec des responsables des forces de sécurité, le président Kaïs Saïed a déclaré* : « *Selon la Constitution, j'ai pris des décisions que nécessite la situation afin de sauver la Tunisie, l'État et le peuple tunisien ». « Nous traversons les moments les plus délicats de l'histoire de la Tunisie », a ajouté le chef de l'État, engagé depuis des mois dans un bras de fer avec le principal parti parlementaire, Ennahdha. « Ce n'est ni une suspension de la Constitution ni une sortie de la légitimité constitutionnelle, nous travaillons dans le cadre de la loi », a-t-il assuré, précisant que ces décisions seraient publiées sous forme de décret* ».

Dans un communiqué publié sur Facebook, la présidence a ensuite précisé que le gel du Parlement était en vigueur pour 30 jours. Kaïs Saïed, qui prônait pendant sa campagne électorale une révolution par le droit et un changement radical de régime, a aussi annoncé qu'il démettait de ses fonctions le chef du gouvernement Hichem Mechichi.

Le président de la République a enfin annoncé qu'il *«se chargerait du pouvoir exécutif avec l'aide d'un gouvernement dont le président sera désigné par le chef de l'État »*. Le président a en outre levé l'immunité parlementaire des députés et promis de poursuivre les personnes impliquées dans des affaires judiciaires.

L'état d'exception a été reconduit par une annonce du chef de l'Etat tunisien dans la nuit de lundi 23 à mardi 24 août, sous la forme d'un communiqué laconique de la présidence de la République. Le texte précise que les *« mesures exceptionnelles »* prises le 25 juillet sont *« prolongées* (…) *jusqu'à nouvel ordre »*. Concrètement, la décision présidentielle de suspendre les travaux de l'Assemblée des représentants du peuple et de lever l'immunité des députés a donc été prorogée.

Le 22 septembre 2021, le chef de l'État *a officialisé ses pleins pouvoirs par des « mesures exceptionnelles* » qui prolongent la suspension du Parlement. Elles lui permettent aussi de légiférer par décret, de présider le Conseil des ministres et d'amender les lois.
Le 13 décembre 2021, dans les suites d'une réunion du G7 et manifestement au vu des critiques émises, le Président de la République a annoncé, dans un discours, sa feuille de route et les différentes échéances visant à fermer à terme la parenthèse de l'état d'exception :

- 1er janvier au 20 mars 2022 : Consultation nationale populaire via une plateforme numérique et consultations directes
- Du 20 mars 2022 à fin juin 2022 : Création d'une commission chargée d'examiner les propositions issues des consultations directes
- 25 juillet 2022 : Référendum sur une nouvelle constitution

[4] **Article 80** : « En cas de péril imminent menaçant la Nation ou la sécurité ou l'indépendance du pays et entravant le fonctionnement régulier des pouvoirs publics, le Président de la République peut prendre les mesures requises par ces circonstances exceptionnelles après consultation du Chef du Gouvernement, du Président de l'Assemblée des Représentants du Peuple et information du Président de la Cour constitutionnelle. Il adresse à ce sujet un message au peuple.
Ces mesures garantissent, dans les plus brefs délais, un retour à un fonctionnement régulier des pouvoirs publics. L'Assemblée des Représentants du Peuple est considérée, durant cette période, en état de réunion permanente. Dans ce cas, le Président de la République ne peut dissoudre l'Assemblée des Représentants du Peuple et il ne peut être présenté de motion de censure à l'encontre du Gouvernement.
Trente jours après l'entrée en vigueur de ces mesures et à tout moment passé ce délai, le Président de l'Assemblée des Représentants du Peuple ou les deux-tiers de ses membres, peuvent saisir la Cour constitutionnelle en vue de vérifier si les circonstances exceptionnelles perdurent. La décision de la Cour est adoptée publiquement dans un délai ne dépassant pas quinze jours.
Ces mesures cessent d'avoir effet dès lors que les circonstances qui les ont engendrées prennent fin. Le Président de la République adresse un message au peuple à ce sujet ».



- 17 décembre 2022 : Organisation d'élections législatives anticipées

Par décret présidentiel du 30 mars 2022, l'Assemblée des représentants du peuple a été officiellement dissoute, avec effet immédiat, « *en préservation de l'Etat, des institutions et du peuple* » selon le président de la République.

Cette décision est intervenue dans les suites immédiates d'une réunion virtuelle de l'Assemblée, qui avait décidé d'abroger les décrets loi adoptés depuis le 25 juillet 2021.

Selon un document de l'alliance pour la sécurité et les libertés, 200 jours après le 25 juillet 2021, 260 décrets présidentiels ont été publiés au journal officiel, dont 79 portant limogeage et 68 portant nomination. Parallèlement 138 mesures administratives et judiciaires ont été prises contre des personnalités publiques issues de la politique, des médias ou des hauts fonctionnaires (dont 56 interdictions de voyager ; 50 arrestations / mandats de dépôt / condamnations ; et 15 assignations à résidence). Enfin 12 procédures, dont l'une touchant un ancien bâtonnier de Tunis, ont été diligentées devant la justice militaire.

Parallèlement des projets de décrets lois, touchant notamment au statut des associations et à la liberté d'expression sont en préparation.

3-3 – De la dissolution du CSM à la révocation des juges et procureurs

Dans la nuit du 5 au 6 février 2022, le Président de la République a annoncé, dans un discours, depuis le ministère de l'intérieur, la dissolution du Conseil Supérieur de la Magistrature et stigmatisé violemment les magistrats.

L'AMT a alors considéré qu'il s'agissait de propos diffamatoires, incitant à la haine et la violence contre les magistrats et manifestement destinés à les intimider.

Elle a, par communiqué, considéré que la dissolution du CSM était un déni de l'acquis démocratique du CSM en tant qu'institution constitutionnelle indépendante garante du système de séparation des pouvoirs et d'équilibre entre eux. Elle a en outre estimé que cette dissolution était une destruction des institutions constitutionnelles, constituait un recul grave et sans précédents des acquis constitutionnels et une tentative de soumettre le pouvoir judiciaire au pouvoir exécutif dans lequel le président de la République a tous les pouvoirs entre ses mains.

Le siège du CSM a été fermé par les forces de l'ordre le 7 février 2022 sur instruction de l'exécutif et les membres du CSM et les personnels de l'institution interdits de rejoindre leurs bureaux.

Le même jour, la création d'un conseil provisoire était annoncée.

L'alliance pour la sécurité et les libertés laisse entendre que cette dissolution serait à mettre en lien avec le refus par le conseil le 5 janvier 2022 de donner son avis sur un décret-loi relatif à la « *réconciliation pénale* » qui lui avait été soumis et qui permettait d'accorder une amnistie à tout demandeur de réconciliation financière ayant un dossier judiciaire en cours, à condition de rembourser ou investir les montants engagés dans le litige pour le développement régional.

Dans sa délibération refusant de donner un avis sur l'ensemble du texte et estimant n'être pas compétent pour en connaitre, le CSM avait néanmoins émis deux réserves :

- l'une sur la création du pôle judiciaire au sein de la Cour d'appel qui imposerait une loi organique et n'était donc pas possible par décret-loi,

- l'autre s'inquiétant du sort des dossiers de corruption financière actuellement suivis (en application de la loi 53-2013 instaurant la justice transitionnelle).

L'AMT demandait le 8 février 2022 aux magistrats de suspendre totalement leur travail dans les tribunaux pour deux jours les 9 et 10 février 2022 et de se réunir lors d'un sit-in devant le CSM le 10 février. Enfin une réunion exceptionnelle de tous les magistrats le 12 février était organisée.

Malgré cette importante mobilisation, la création du CSM provisoire était actée par un décret-loi du 12 février 2022.

Ce décret-loi donne de larges prérogatives au Président de la République et au pouvoir exécutif en matière de nomination des magistrats, mesures disciplinaires, carrière des magistrats, interdiction de la liberté d'association et d'expression aux magistrats

Les membres du conseil provisoire sont directement et exclusivement nommés par le président lui-même sans aucune représentation électorale des magistrats des différents grades.

Le président du gouvernement et le ministre de la justice ont exclusivement les prérogatives d'adresser des rapports au CSM provisoire pour ouvrir des enquêtes disciplinaires à l'encontre des magistrats, ces derniers sont révoqués sur la base des dites enquêtes.

Mais le président de la république peut aussi les révoquer directement en application de l'article 20 du décret-loi[5]).

Le président peut réviser les nominations « proposées » par le CSM provisoire et il peut aussi nommer lui-même des magistrats dans les postes judiciaires sans revenir vers le CSM provisoire.

Les magistrats sont interdits de grève par le décret-loi alors que la constitution garantit ce droit (qui n'est interdit par le texte constitutionnel qu'aux forces de l'ordre).

A compter de début 2022, les critiques des magistrats par les représentants du pouvoir exécutif (notamment le Président de la République lui-même sur Facebook) ont été de plus en plus nombreuses.

Toutes les personnes que j'ai pu rencontrer ont évoqué des blogueurs à la solde du pouvoir (que d'aucuns ont qualifié de « milices ») diffusant sur les réseaux sociaux des attaques en règle contre la magistrature, voire contre des magistrats nommément cités. Des informations confidentielles issues de dossiers administratifs, voire même médicaux, ont ainsi été publiés.

Des magistrates ont été particulièrement visées avec des accusations très personnelles, notamment relatives à de prétendues relations adultères.

[5] ***Art. 20*** – Le Président de la République a le droit de demander la cessation de fonctions de tout magistrat qui viole volontairement ses devoirs professionnels sur la base d'un rapport motivé du Chef du Gouvernement ou du ministre de la Justice. Dans ce cas, le conseil provisoire de la magistrature intéressé prend immédiatement une décision de suspension de fonctions contre le magistrat intéressé. Il statue sur la demande de cessation de fonctions dans un délai maximum d'un mois à compter de la date de sa saisine après que les garanties prévues par la loi lui sont octroyées. Dans le cas où le conseil n'aurait pas statué dans le délai fixé, le Chef du Gouvernement ou le ministre de la Justice peut se saisir du dossier pour entreprendre les investigations nécessaires durant quinze (15) jours avant de le transmettre au Président de la République qui a alors le pouvoir de prendre la décision de révocation.
Le Président de la République peut, en cas d'urgence, ou d'atteinte à la sécurité publique ou à l'intérêt supérieur du pays, et sur rapport motivé des autorités compétentes, prendre un décret Présidentiel prononçant la révocation de tout magistrat en raison d'un fait qui lui est imputé et qui est de nature à compromettre la réputation du pouvoir judiciaire, son indépendance ou son bon fonctionnement
L'action publique est mise en mouvement contre tout magistrat révoqué au sens du présent article.
Le décret Présidentiel relatif à la révocation d'un magistrat, n'est susceptible de recours qu'après le prononcé d'un jugement pénal irrévocable concernant les faits qui lui sont imputés.



J'ai pu constater combien ces attaques pouvaient être violentes, ayant moi-même été pris à partie après publication d'un tweet relatant les difficultés de ma visite et le refus des autorités de me recevoir.

Dans la nuit du 1er au 2 juin 2022, la situation s'est encore dégradée.

Ont en effet été publiés un décret-loi n°35, augmentant encore les pouvoirs du président de la République[6] et un décret n°516 révoquant 57 magistrats.

Juste avant l'annonce de la parution de ce décret, dans un discours télévisé, le président de la République a expliqué sa décision en accusant les magistrats de corruption et autres crimes moraux. Il a cité certains exemples de ce que les magistrats concernés auraient fait et appelé le peuple tunisien à l'aider à appliquer sa décision de révocation, mettant par là même en danger les magistrats révoqués et leurs familles.

Aucune charge individuelle n'a été notifiée aux magistrats concernés. Le CSM provisoire n'a pas été consulté. Les droits élémentaires du procès équitable n'ont pas été respectés. La décision de suspension ou de révocation emporte de plein droit l'ouverture d'une procédure pénale (sans que soit précisées les incriminations éventuellement retenues). Le recours contre la décision de révocation / suspension ne sera ouvert que lorsqu'une décision définitive et irrévocable aura été rendue dans le cadre de la procédure pénale engagée.

Le 4 juin 2022, l'AMT, avec tous les autres représentants de la magistrature, a organisé un conseil national d'urgence réunissant 1500 magistrats de tout le pays et toutes les juridictions et voté la suspension dans tous les tribunaux pendant une semaine renouvelable de toute activité à l'exception notamment des affaires de terrorisme. Il a aussi été décidé de créer une instance de coordination entre les différentes structures de magistrats.

La grève a été reconduite jusqu'au 3 juillet, date à laquelle il a été décidé de reprendre le travail. Selon l'AMT, la grève a été massivement suivie (99 % des magistrats).

A compter du 22 juin, 3 magistrats révoqués ont débuté une grève de la faim. Ils ont été rejoints par deux autres magistrats le 4 juillet.

3-4 – Vers une nouvelle constitution

Dans les suites de la consultation lancée au début de l'année 2022, un projet de constitution a été présenté au Président de la République le 20 juin par le président de la commission ad hoc.

Ce projet a été immédiatement critiqué compte tenu des régressions importantes qu'il comporte par rapport à la constitution de 2014.

Le projet final du 30 juin proposé au référendum, et modifié par rapport à celui proposé par la commission, a également fait l'objet de commentaires négatifs de la part du président de cette commission.

Amnesty International a considéré le 5 juillet que : *« Le nouveau projet de Constitution présenté par les autorités tunisiennes le 30 juin, à l'issue d'un processus de rédaction obscur et accéléré, compromet les garanties institutionnelles relatives aux droits humains, notamment en restreignant encore l'indépendance de la justice (…) Le projet de Constitution n'offre pas à la justice tunisienne les garanties nécessaires pour agir en toute indépendance et impartialité et supprime des mécanismes de surveillance qui permettent d'amener les autorités à rendre des comptes. Il contient des dispositions inquiétantes qui laisseraient aux autorités une marge de manœuvre pour interpréter les droits de manière restrictive au nom de l'islam. Si, sur le papier, ce projet conserve plusieurs droits essentiels, il accorde au président des pouvoirs relevant de l'état d'urgence largement incontrôlés, susceptibles*

*d'être invoqués pour restreindre les droits fondamentaux. Ce projet démantèle nombre des garanties figurant dans la Constitution post-révolution tunisienne et n'apporte pas de garanties institutionnelles pour les droits humains. La suppression de ces garde-fous adresse un message très inquiétant et balaie des années d'efforts visant à renforcer la protection des droits humains en Tunisie ».*

Sur le plan judiciaire, la situation du CSM provisoire est pérennisée. La nouvelle Constitution ne comporte aucune mention de la composition des institutions de surveillance judiciaire et le pouvoir judiciaire devient une simple fonction.

En outre, le projet de Constitution dispose que les juges sont nommés par ordonnance présidentielle directe sur recommandation du CSM, un recul par rapport à la Constitution de 2014 qui exigeait que le président suive un avis contraignant du CSM concernant la nomination des juges et conférait au CSM le mandat de superviser la révocation, la promotion et le transfert des juges. Le projet de Constitution ouvre la porte à des sanctions et à la révocation des juges par l'exécutif en supprimant la mention selon laquelle de telles décisions doivent être prises conformément à « *une décision motivée du CSM* ».

Par ailleurs, le projet supprime la disposition de la Constitution actuelle selon laquelle les tribunaux militaires ne doivent traiter que des crimes militaires, ce qui vise à protéger les civils.

Les droits et garanties des citoyens sont limités et quasi systématiquement il est permis au président de la République d'y déroger sans limites particulières.

Alors que le référendum est prévu dans moins de 3 semaines, le Président de la République continue à modifier le texte soumis aux électeurs. Ainsi le 9 juillet dans un article 55 relatif aux droits et libertés, il est indiqué : « *Aucune restriction ne doit être apportée aux droits et libertés garantis dans la présente constitution, si ce n'est en vertu d'une Loi ou d'une nécessité imposées par un ordre démocratique* ». D'éventuelles restrictions ne peuvent intervenir que « *dans le but de protéger les droits et libertés d'autrui ou pour les besoins de la sécurité publique, de la défense nationale ou de la santé publique* ».

Ces articles, sont aux dires des universitaires rencontrés, parfaitement représentatifs de l'ensemble de la constitution qui facialement prévoit des garanties et droits, pour dans un deuxième temps prévoir des exceptions pour des motifs larges qui confèrent au président de la République tous pouvoirs.

La campagne électorale a été très encadrée pour rendre plus difficile la manifestation des opinions par les opposants. La commission électorale a aussi vu sa composition évoluer.

Les garanties d'un scrutin équitable (avec 14000 bureaux de vote fixes et un millier de bureaux de votes itinérant) ne semblent pas réunies. Les sondages montrent une désaffection pour le processus, seul 1 million des électeurs tunisiens (sur 9 millions) semblant disposer à aller voter le 25 juillet.

La société civile hésite entre un appel à un vote NON et un boycott, les tenants du boycott expliquant que faute de garantie sur la sincérité du vote et compte tenu du risque de fraudes, il faut éviter de donner, par un nombre d'électeurs importants, une légitimité à l'adoption de cette constitution régressive.

**4 - Programme de la visite**

4-1 – Rencontres avec le bureau de l'AMT et les magistrats révoqués

Après une première rencontre avec le président et les membres du bureau de l'AMT, dans leurs locaux situés au sein du tribunal de première instance de Tunis, je me suis rendu au Club des Magistrats où j'ai rencontré et discuté longuement avec une trentaine de magistrats révoqués.

Afin de les protéger, il ne m'est pas apparu opportun de citer les fonctions exercées, mais certains occupaient les plus hauts postes de la magistrature tunisienne (chefs de cour, membres du CSM, procureurs, magistrats du siège et du parquet engagés dans la lutte anti-terroriste, représentants des magistrats, notamment les responsables de l'association des jeunes magistrats…).

Tous se sont dits sous le choc et ont parlé de « *massacre de la justice* » et de profond sentiment d'injustice.

Ils ont tous appris leur révocation par la publication de la liste. Certains qui étaient déjà arrivés à leur bureau au matin ont été invités par la police à le quitter. D'autres ont constaté en arrivant dans leur tribunal que la serrure de leur bureau avait été changée.

Sur les 57 magistrats concernés, 45 ne faisaient l'objet d'aucune procédure par l'inspection de la Justice. Plus d'un mois après leur révocation, aucune procédure ni disciplinaire, ni pénale n'a au demeurant été engagée contre eux. Néanmoins, tous ont indiqué qu'ils avaient officieusement appris que des dossiers étaient en cours de constitution, leurs anciens bureaux ayant été visités et perquisitionnés.

Sur les 12 autres, certains magistrats avaient déjà fait l'objet de sanctions disciplinaires (notamment des suspensions) et semblent donc avoir été sanctionnés une deuxième fois pour les mêmes faits.

Certains avaient vu des procédures ouvertes contre eux par l'inspection au cours des derniers mois, sans que celles-ci aient abouti, de sorte qu'ils ont été sanctionnés en violation de toutes les règles du procès équitable.

Enfin, un magistrat est victime d'un problème d'homonymie. L'enquête rapide menée par l'inspection semble avoir démontré cette erreur. Mais pour autant, la réintégration n'a pas été ordonnée, le pouvoir exécutif semblant manifestement estimer qu'il s'agit d'un simple dommage collatéral.

7 femmes magistrates sont concernées. Elles ont été particulièrement ciblées sur les réseaux sociaux, notamment par une forme de harcèlement et des attaques récurrentes sur leur vie privée. La publication de documents sortis de leurs dossiers professionnels et médicaux m'a été signalée.

Faute de charges précises portées contre eux, tous les magistrats rencontrés se sont livrés à une introspection et ont essayé de déterminer en fonction des attaques générales contre les magistrats de ces dernières semaines par le président de la République (et notamment au vu des propos tenus dans le discours annonçant les révocations à venir) ce qui avait pu le conduire à ajouter leur nom sur la liste des révoqués.

Une trentaine d'entre eux semble devoir leur révocation à leur refus de répondre favorablement à des pressions politiques dans le cadre de certaine procédures mises en œuvre contre des parlementaires d'opposition. D'autres pensent l'avoir été en lien avec de très anciennes décisions rendues (dans les suites immédiates de la révolution) et concernant des problèmes d'état civil. D'autres enfin semblent l'avoir été pour des propos tenus en leur qualité de représentants des magistrats pour rappeler les règles applicables en démocratie et dénoncer les réformes adoptées par le pouvoir exécutif depuis le 25 juillet. Les membres légitimes du CSM dissous s'interrogent quant à eux sur les raisons de leur éviction.

De nouvelles listes ont récemment fleuri sur les réseaux sociaux. Entre 400 et 500 magistrats seraient concernés, notamment les représentants de l'AMT.

Le président de l'AMT a au demeurant été convoqué à l'inspection de la justice le 7 juillet, à l'heure précise à laquelle devait se tenir la conférence de presse prévue de longue date. Des pressions s'exercent sur ceux qui ont conduit les deux mouvements de grève de février et juin.

Tous les magistrats que j'ai rencontrés m'ont fait part du sentiment de terreur qui régnait désormais dans les juridictions. Toute le monde se sent menacé et plus personne ne peut travailler, puisque chaque acte juridictionnel est désormais potentiellement motif à révocation. Chacun est donc, pour chaque décision, incité à « *sonder les cœurs du président et de ses proches* » avant de prendre quelque décision que ce soit.

Malgré l'impossibilité écrite dans le décret de révocation de faire un recours, 54 des 57 magistrats révoqués ont saisi le président du Tribunal administratif, selon un argumentaire commun mis en place avec le soutien d'avocats et d'universitaires.

Conformément à la Loi tunisienne, ce recours au président du Tribunal administratif doit être tranché dans le délai d'un mois de la saisine. Médiatiquement le pouvoir exécutif a fait savoir que les décisions seraient rendues dans un délai de deux mois, l'objectif étant manifestement qu'aucune décision ne soit rendue avant le référendum du 25 juillet.

Il convient néanmoins de souligner que le Président de ce tribunal est nommé par l'exécutif et qu'il m'a été indiqué que les dernières décisions rendues par lui n'étaient plus en lien avec la jurisprudence constante de la juridiction statuant en collégialité.

J'ai enfin rencontré au Club des magistrats 4 magistrats grévistes de la faim (dont deux depuis le 22 juin) et un cinquième dans un hôpital de Tunis où il avait dû être hospitalisé compte tenu de la dégradation de son état de santé.

Tous ont expliqué avoir engagé ce processus de grève de la faim par désespoir face à leur situation administrative, familiale et financière après leur révocation sans solde et avec l'espoir que cette grève de la faim puisse inciter le pouvoir à tenir le délai d'un mois du recours devant le conseil d'Etat.

Au-delà de l'effet de sidération et de sentiment d'injustice, tous ces magistrats m'ont semblé particulièrement déterminés et courageux. Ils ne défendent pas seulement leur position dans la magistrature, ni leur honneur et leur réputation, même si ceux-ci ont été gravement attaqués, ils défendent des valeurs universellement reconnues d'une justice indépendante et impartiale.

A ce titre, ils doivent tous en être remercié. Leur attitude collective et individuelle fait honneur à la magistrature et à leur serment de magistrat.

4-2 - Rencontre avec la représentante du Haut-Commissaire aux droits de l'Homme

Un représentant du haut-commissaire aux droits de l'homme est présent à Tunis, à la demande des autorités tunisiennes depuis 2011, dans les suites de la révolution, pour accompagner le processus de transition démocratique. Un gros travail en coopération a été effectué pour développer les droits de l'homme en lien avec les standards internationaux et en appui des nouvelles institutions mises en place (notamment celles issues de la Constitution de 2014).

La représentante m'a indiqué que la société tunisienne avait fait en 10 ans un très important travail d'introspection, que les institutions ont fonctionné, mais que des blocages sont restés et quelques réformes fondamentales ne sont pas allées au bout, notamment la mise en place de la cour constitutionnelle, qui fait dans le contexte actuel gravement défaut.

Elle a souligné qu'elle avait travaillé avec l'AMT bien avant le 25 juillet, notamment au regard du fonctionnement non optimal du CSM qui rendait indispensable des réformes pour améliorer éthique et indépendance.



Elle a estimé assister depuis le 25 juillet 2021 à un démantèlement progressif des institutions, un détricotage des équilibres institutionnels.

Elle s'est dite particulièrement inquiète des propos agressifs à l'égard des magistrats, des appels à la haine, des attaques ad hominem, des sous-entendus permanents, notamment sur les réseaux sociaux, mouvements manifestement organisés qui ne concernent pas seulement les magistrats.

Elle a souligné une réaction timide de la communauté internationale, à mettre en lien avec le fait, outre la situation géopolitique mondiale et régionale, que le resserrement des droits s'effectue progressivement. Il n'y a en effet pas eu de mouvements massifs d'arrestation et les oppositions peuvent encore s'exprimer, notamment via des médias encore indépendants, même si des menaces pèsent sur leur indépendance.

Elle a souligné les difficultés qu'elle rencontrait pour voir accès à ses interlocuteurs habituels hormis le ministère des affaires étrangères et a souligné l'importance d'un soutien de la communauté internationale, ce qui explique la prise de position de la haute commissaire après la dissolution du CSM[7].

4-3 – Rencontre avec les membres du comité civil pour l'indépendance de la Justice

Ce comité s'est constitué début 2022 au sein de la société civile (notamment parmi les avocats et universitaires) qui croient en l'indépendance de la justice et se battent pour le respect des droits humains.

Les membres ont souligné les signes encourageants dans ces deux domaines depuis la révolution, même si des évolutions étaient évidemment toujours nécessaires. Ils ont regretté que les médias n'aient jamais mis en avant ces progrès et en soient resté à ressasser les inévitables dysfonctionnements dans une période de transition démocratique.

Ils ont ajouté que depuis la révolution, tous les présidents avaient tenté de garder la main sur le fonctionnement de la Justice, mais qu'aucun ne l'avait mis sous sa tutelle comme l'actuel président, après avoir créé de toute pièce en quelques mois une opinion hostile par des critiques inélégantes et injustes.

Ils ont précisé que la manœuvre de juin était habile, puisque parmi les 57 juges révoqués figurent des magistrats qui avaient déjà fait l'objet de sanctions par le CSM et d'autres qui étaient mis en cause dans des procédures ouvertes par l'inspection ou devant le CSM. Mais ils ont affirmé que l'immense majorité des magistrats révoqués (pour qui aucune procédure n'a jamais été ouverte) l'a été uniquement pour avoir refusé de céder aux pressions du pouvoir dans des dossiers politiques.

Ils ont également ajouté que la situation actuelle était inadmissible et que le projet de constitution soumis à référendum l'aggravera encore puisqu'il est manifeste que l'objectif est que la justice ne soit plus du tout indépendante (d'où le terme de fonction au lieu de pouvoir).

[7] **Déclaration de M BACHELET – Genève 8 février 2022**
« La Haut-Commissaire des Nations Unies aux droits de l'homme Michelle Bachelet a exhorté mardi le Président de la Tunisie à restaurer le Conseil supérieur de la magistrature, avertissant que sa dissolution nuirait gravement à l'état de droit, à la séparation des pouvoirs et à l'indépendance du pouvoir judiciaire dans le pays.

« Beaucoup de choses restent encore à faire pour que la législation, les procédures et les pratiques du secteur de la justice soient conformes aux normes internationales applicables, mais cette décision est un grand pas dans la mauvaise direction », a déclaré Mme Bachelet. « La dissolution du Conseil supérieur de la magistrature est une violation claire des obligations de la Tunisie découlant du droit international des droits de l'homme. »

Ils ont dénoncé un projet de constitution effrayant qui :

- introduit un pouvoir sans limite pour le président, une irresponsabilité et une immunité totale, même après ses mandats,
- est taisant sur les conditions de l'indépendance de la justice,
- met en cause les droits et la place des femmes dans la société tunisienne,
- fait disparaitre les références aux conventions ratifiées par la Tunisie

Ils se sont dit inquiets du déroulement de la campagne électorale et des risques massifs de fraude pour obtenir un résultat favorable. Ils ont également relevé que le discours était toujours le même, à savoir que les réformes sont nécessaires pour assainir la société et lutter contre la corruption, alors que l'entourage proche du chef de l'état n'est pas exempt de reproches et qu'en ce qui concerne les magistrats nombre d'entre eux connus pour leur approche peu éthique de leurs fonctions sont toujours en fonction.

Tous ont dénoncé un « *coup d'état par petites touches* » et dès lors une difficulté majeure à communiquer pour expliquer au peuple tunisien et à la communauté internationale la réalité de ce qui se passe.

4-4 – Rencontre avec les représentants de la société civile

Le rencontre s'est faite avec des responsables syndicaux et associatifs n'œuvrant pas nécessairement dans le champ judiciaire.

Tous ont souligné qu'ils avaient le sentiment de revenir à la situation antérieure à la révolution de 2011, avec un régime sécuritaire dirigé par un président disposant de tous les pouvoirs.

Ils ont indiqué que pour l'instant certaines libertés étaient encore maintenues, mais qu'elles allaient s'évanouir dès que la nouvelle constitution aura été adoptée.

Ils ont parlé d'un « *coup d'état qui ne dit pas son nom* » et déploré des campagnes de dénigrement permanentes et une présentation systématique de tous les organes institutionnels comme des « *traitres freinant le fonctionnement de l'Etat* » et nuisant dès lors au peuple tunisien.

Ils ont relevé que « *la dictature s'installe et que la société civile est divisée* ». Ils ont souligné que dans les suites du 25 juillet, la société civile a peu réagi à la suspension du parlement, parce que c'était pour certains un moyen de se débarrasser du parti islamiste Ennahdha et qu'ils sont tombés dans le piège tendu.
L'un de mes interlocuteurs a ajouté : « *ceux qui étaient favorables à la dissolution ne vont pas manger à la table du président, ils seront le prochain plat* ».

Ils ont déploré l'absence de réaction de la communauté internationale, qui ne semble pas voir la situation, ou qui la perçoit mais considère comme plus importants les enjeux de lutte contre le terrorisme et de gestion de la situation migratoire.

Ils ont indiqué se préparer aux travaux menés à Genève par l'ONU dans le cadre de l'examen périodique universel, puisque la situation de la Tunisie doit être revue cette année.

L'AMT va se joindre à ces travaux communs pour faire entendre la situation de la Justice en Tunisie depuis 2022 (les travaux de recollement des données se sont en effet achevés en 2021, soit avant les événements concernant les institutions judiciaires).



4-5 – Rencontre avec les partenaires de l'AMT : Avocats sans frontières / Commission internationale des Juristes (ICJ) / Euromed

Mes interlocuteurs m'ont fait part de leurs inquiétudes face à la situation actuelle et à l'adoption de la future constitution.

Ils estiment que :

- la séparation des pouvoirs est inexistante
- des atteintes aux droits de l'homme se produisent
- la justice est durablement affaiblie
- le système de « check and balance » a disparu

Ils ont indiqué que, dans une logique populiste, le pouvoir actuel avait gagné « *le narratif* » en présentant les juges et la justice comme le talon d'Achille d'une décennie noire et en imposant l'idée qu'il fallait réformer la justice pour sortir du néant actuel dans l'intérêt du peuple tunisien.

Ils ont ajouté qu'ils appelaient de longue date, aux côtés de l'AMT, à une réforme de la Justice pour améliorer son fonctionnement, mais que ces réformes ne pouvaient se faire comme elles se font depuis début 2022, en violation de tous les standards internationaux et engagements de la Tunisie.

Ils ont au demeurant félicité les dirigeants de l'AMT pour leur opiniâtreté au cours des dernières années pour faire évoluer la Justice et pour leur courage au cours des derniers mois.

Ils ont souligné qu'existait une volonté du pouvoir d'isoler la société civile de son positionnement international, mais ils se sont dit certains que le Président Kais SAIED était prêt à faire des concessions pour garder des liens internationaux forts, la Tunisie ayant besoin de soutiens et de fonds dans un contexte géopolitique et économique très difficile.

Ils ont parlé de régression considérable par rapport aux acquis de la révolution (même si tout n'était pas parfait, ce qui n'est pas étonnant après 70 ans de parti unique et une culture institutionnelle démocratique non encore pérenne) et même de massacre des institutions.

Ils ont surtout souligné que la peur s'installait :

- Harcèlement judiciaire
- Assignations à résidence en hausse
- Arrestations arbitraires
- Traduction de civils devant les juridictions militaires pour offense au chef de l'Etat notamment

Dans ce contexte, ils ont estimé qu'il était important d'intervenir auprès des partenaires internationaux de la Tunisie qui ont appuyé et financé les réformes depuis 10 ans, en leur demandant combien de temps ils allaient encore soutenir un régime qui met en pièce ce qu'ils ont contribué à construire.

L'idée d'une intervention commune (avec l'AMT et l'UIM) à destination des bailleurs de fond de la Tunisie a été mise sur la table.

4-6 – Rencontre avec les anciens bâtonniers

Les deux anciens bâtonniers de Tunis que j'ai rencontrés se sont dits très inquiets des évolutions récentes qu'ils ont décrites comme très graves.

Ils ont surtout souligné qu'il n'y avait plus aucune sécurité juridique ni hiérarchie des normes, puisque le président sans contrepouvoir décidait de tout et légiférait par décrets lois.

Ils ont déploré la disparition dans le projet de constitution des articles actuels qui incluaient l'avocat dans la partie sur le pouvoir judiciaire, faisait de l'avocat le défenseur des droits et libertés et lui assurait une protection dans l'exercice de ses missions.

Ils ont ajouté que, si l'actuel bâtonnier n'avait pas réagi aux mises en cause des magistrats et de certains avocats, en raison de sa proximité avec le chef de l'Etat, l'immense majorité des avocats tunisiens étaient solidaires des magistrats et de leur combat, parce que c'est un combat pour défendre des valeurs communes.

Ils ont estimé que la Tunisie allait vers l'inconnu, n'était déjà plus un Etat de droit, mais un pays tenu par une force sécuritaire qui restait dans l'ombre et un président en apparence tout puissant.

Les soutiens explicites récemment apportés par le conseil national des barreaux français ont été très appréciés[8].

4-7 – Conférence

Le 6 juillet je suis intervenu dans la cadre d'une conférence réunissant sous la présidente de la vice-présidente de l'AMT, deux universitaires et la présidente d'honneur de l'AMT.

Le texte de mon intervention sur le thème de la garantie des droits des magistrats pendant les procédures disciplinaires figure en annexe du présent rapport.

4-8 – Absence de rencontres avec les autorités politiques et judiciaires tunisiennes

Avant mon déplacement à Tunis, les représentants de l'AMT sont intervenus auprès des services du Président de la République, de ceux de la première ministre, de la ministre de la Justice et des présidents du conseil supérieur de la magistrature provisoire pour que puisse être envisagée une rencontre avec moi.

En l'absence de réponse formelle (seule des réponses indiquant qu'une information serait prochainement donnée), des contacts téléphoniques ont été pris en ma présence le 5 juillet au soir, le planning prévoyant ces rencontres le 6 au matin.

Aucune réponse favorable n'a été donnée. Je m'en suis ouvert sur mon compte twitter en écrivant : *« Evidemment aucune autorité n'a souhaité me recevoir aujourd'hui. Auraient-ils des choses à cacher ? ou honte des décisions de révocation sans fondement ».*

En le rédigeant ainsi, j'étais quasiment certains que les blogueurs à la solde du pouvoir en place allaient se manifester. J'ai alors subi une succession d'attaques ad hominem en provenance de comptes manifestement destinés à ce type d'attaques (enregistrés hors de Tunisie et comportant souvent un faible nombre d'abonné et d'abonnement et n'ayant qu'une activité très faible) ce qui est symptomatiques des « *trolls* » agissant sur les réseaux sociaux.

[8] https://www.cnb.avocat.fr/fr/actualites/le-cnb-apporte-son-soutien-au-batonnier-abderrazak-kilani

https://www.cnb.avocat.fr/fr/actualites/un-message-de-soutien-aux-57-magistrats-tunisiens-revoques



Le jour de mon départ, le ministère a finalement officiellement démenti que quelques contacts aient été pris par l'AMT pour organiser une rencontre avec moi, ce qui est manifestement un mensonge.

4-9 – Conférence de presse

A l'issue de toutes les rencontres, une conférence de presse a été organisée au club des magistrats.

Après avoir rappelé les conditions de mon déplacement et les rencontres programmées, j'ai dénoncé publiquement :

- La dissolution du CSM légitime et la création d'un CSM provisoire à la composition non conforme aux standards internationaux
- Les attaques incessantes des magistrats par le Président de la République et le dénigrement dont ils sont victimes sur les réseaux sociaux
- Les révocations par décret présidentiel sans aucun respect des garanties élémentaires qui doivent être accordés aux magistrats pour respecter les principes du procès équitable

J'ai publiquement félicité les dirigeants de l'AMT, que j'ai qualifié de héros se battant pour les magistrats et le peuple tunisien, mais aussi pour défendre les valeurs universellement reconnues d'une justice indépendante et impartiale.

Je leur ai apporté au nom de l'UIM un soutien total, conforme à celui qui avait été manifesté par le comité de Présidence à l'occasion de sa réunion à Vérone le 11 juin dernier[9].

J'ai demandé formellement le retour à l'état de droit en Tunisie et la réintégration immédiate des magistrats révoqués.

J'ai enfin fait état des discussions et des projets quant à la suite de ma visite, notamment l'idée d'un travail commun avec les partenaires de l'AMT et les membres de la société civile pour intervenir auprès des bailleurs de fonds de la Tunisie et travailler au blocage des financements accordés depuis 10 ans pour assoir l'état de droit et accompagner les réformes de la Justice.

J'ai conclu sur la nécessite de « *rendre Justice aux magistrats tunisiens et rendre Justice à la Justice tunisienne* ».

## 5 – Conclusions

La situation en Tunisie est, de l'avis de tous mes contacts, catastrophique.

Une dictature (ou à tout le moins un régime policier dirigé par un Président ayant tous les pouvoirs) se met en place à bas bruit depuis le 25 juillet 2021.

[9] **Résolution comité présidence 11 juin 2022**
L'indépendance du pouvoir judiciaire est une pierre angulaire de l'État de droit et doit être garantie par l'Etat qui a le devoir d'assurer la séparation des pouvoirs, exécutif, législatif et judiciaire.
Le Statut Universel du Juge, en conformité avec les Principes Fondamentaux des Nations Unies relatifs à l'Indépendance de la Magistrature, stipule à son article 7-1 que les procédures disciplinaires contre les juges « doivent relever d'un organe indépendant comportant une majorité de juges ou d'un organe similaire » et doivent, en tous cas, être « soumises au droit au procès équitable » ; en cas de sanctions disciplinaires, elles doivent « répondre au principe de proportionnalité ».
Le décret présidentiel n° 516-2022 du 1er Juin 2022 par lequel le Président de la République de la Tunisie s'est donné le pouvoir de révoquer, sommairement et immédiatement 57 magistrats, constitue une grave violation des règles élémentaires caractérisant l'État de Droit et une infraction intolérable au principe de la séparation des pouvoirs.
Par conséquent, le Comité de la Présidence de l'UIM, la plus grande organisation de juges au monde, rassemblant les associations nationales de 94 pays, demande que ce décret soit abrogé et que les éventuelles procédures disciplinaires contre ces magistrats soient soumises à des règles internationalement consacrées, qui garantissent une procédure équitable, impartiale, susceptible de recours et non contrôlée par le pouvoir exécutif.

A la suspension de la chambre des représentants du peuple le 25 juillet et à sa dissolution en mars 2022, est couplée la dissolution du CSM en février 2022 et les révocations de magistrats début juin.

A chaque fois le processus est le même : des attaques virulentes contre ces institutions pour les discréditer auprès de l'opinion publique et une dissolution présentée comme indispensable pour la stabilité du pays et opérée dans l'intérêt du peuple tunisien.

Le Président dispose aujourd'hui en sa seule personne de l'ensemble des pouvoirs exécutif, législatif et judiciaire.

Si la suspension de la chambre des députés a pu être justifiée par les dispositions de l'article 80 de la constitution, la prolongation sans date de l'état d'urgence, la dissolution du CSM en février, celle de l'assemblée en mars et la révocation des magistrats paraissent clairement violer les règles constitutionnelles tunisiennes.

Il en est de même des conditions de révision de la Constitution par référendum qui ne respectent en rien les dispositions du chapitre VIII de la constitution et instaure une procédure ad hoc peu respectueuse des textes.

Dans le champ judiciaire,

- La création d'un CSM provisoire dont tous les membres sont nommés par la Président de la République viole les dispositions de l'article 2-3 du statut universel du juge[10] et toutes les dispositions internationales régissant ce type d'organe.
- La décision de révocation de magistrats par décret du Président de la République viole les articles 2-2 (inamovibilité)[11] et 7-1 alinéa 2 du statut universel du juge[12]
- La mise en œuvre de mesures disciplinaires sur la base de textes récemment publiés viole les dispositions de l'article 7-1 dernier alinéa du statut universel du juge[13]
- La mise en œuvre de mesures disciplinaires pour sanctionner des décisions juridictionnelles viole les dispositions de l'article 7-1 alinéa 3 du statut universel du juge[14]
- La mise en œuvre de mesures disciplinaires sans que les charges soient notifiées, sans capacité de se défendre et sans recours viole toutes les normes internationalement reconnues fondées sur le respect nécessaire du procès équitable et notamment l'article 7-1 4ème alinéa du statut universel du juge[15]

Aucune des dispositions du Pacte international relatif aux droits civils et politiques adopté à l'ONU le 16 décembre 1966, notamment celles sur le droit des personnes mises en cause, et le respect des principes du procès équitable, n'est manifestement respectés[16].

Ainsi que j'ai pu l'indiquer à plusieurs reprises lors de ma visite à Tunis, le sentiment est que la situation actuelle est l'exact décalque inversé de ce qui est exigé par les textes internationaux, comme si l'on était face à un négatif photographique en noir et blanc.

Cette situation doit donc être clairement et fermement dénoncée et combattue.

Si des libertés demeurent (comme celle de manifester et de s'exprimer, certains médias demeurent libres), tous expriment l'idée que ces libertés se resserrent progressivement et que l'adoption de la constitution par référendum le 25 juillet prochain, couplée aux élections législatives de la fin de l'année (qui ne seront probablement pas libres) achèveront le processus lancé en 2021 et conduira à la mise en place d'un système tournant le dos aux idéaux de la révolution de 2011 et aux principes démocratiques mis en œuvre depuis cette date avec le soutien de la communauté internationale.

Des listes de nouveaux magistrats à révoquer seraient en effet en préparation, de même que des textes réduisant le droits d'association et la liberté d'expression.

Dans ce contexte, pour des raisons probablement géostratégiques liées à la nécessité de lutter contre le terrorisme et de limiter le flux migratoire, les réactions internationales semblent très timides.
Les magistrats tunisiens, notamment l'AMT et ses dirigeants, font preuve aux cotés des représentants de la société civile d'une force impressionnante pour défendre les valeurs démocratiques.

Mais ce combat national, pour essentiel qu'il soit, ne peut suffire. Il est indispensable qu'un soutien international fort se mette en place.

Au-delà des contacts avec le haut-commissaire aux droits de l'homme, une réunion en visioconférence a été organisée le 7 juillet avec le rapporteur spécial de l'ONU pour l'indépendance des juges et des avocats, M. Diego GARCIA SAYAN.

L'UIM, en sa qualité de première organisation mondiale de magistrats, doit intervenir aux côtés de l'AMT, association membre et organiser en partenariat des actions concertées au niveau mondial.

J'ai évoqué précédemment le travail à mener avec les autres organisations internationales œuvrant en Tunisie à destination des bailleurs de fond de la Tunisie afin de les sensibiliser à la situation actuelle et les inciter à faire pression sur les autorités tunisiennes pour revenir dans les normes démocratiques, sauf à risquer de ne plus percevoir les fonds.

L'exemple de l'action de l'Union européenne face aux évolutions négatives en Pologne montre, que, pour long qu'il soit, ce processus peut être efficace.

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[10] *Article 2-3 statut universel du juge alinéas 2 et suivants : « Le Conseil de Justice doit être totalement indépendant des autres pouvoirs de l'Etat.*
*Il doit comporter une majorité de juges élus par leurs pairs suivant des modalités garantissant la représentation la plus large de ceux-ci.*
*Le Conseil de Justice peut avoir pour membre des non-magistrats afin de représenter la diversité de la société civile. Pour éviter toute suspicion, ces membres ne peuvent être des politiciens. Ils doivent avoir les mêmes qualités d'intégrité, d'indépendance, d'impartialité et de compétences que les juges. Aucun membre du gouvernement ou du parlement ne peut être en même temps membre du Conseil de Justice.*
*Le Conseil de Justice doit être doté des plus larges compétences en matière de recrutement, formation, nomination, promotion et discipline des juges ».*

[11] *Article 2-2 statut universel du juge : Un juge ne peut être déplacé, suspendu, ou démis de ses fonctions que dans les cas prévus par la loi et dans le respect de procédures disciplinaires, assurant le respect des droits de la défense et le principe du contradictoire ».*

[12] Article 7-1 alinéa 2 statut universel du juge : « Les procédures disciplinaires doivent relever d'un organe indépendant comportant une majorité de juges, ou d'un organe équivalent »

[13] Art 7-1 dernier alinéa statut universel du juge : « *Les sanctions disciplinaires à l'encontre d'un juge ne peuvent être prises que pour des motifs initialement prévus par la loi, en observant des règles de procédure prédéterminées. Elles doivent répondre au principe de proportionnalité* ».

[14] *Article 7-1 alinéa 3 statut universel du juge : « Sauf malveillance ou négligence caractérisée constatées dans une décision de Justice devenue définitive, aucune poursuite disciplinaire ne peut être engagée contre un juge en raison de l'interprétation du droit ou de l'appréciation des faits ou l'évaluation des preuves auxquelles il a procédé ».*

[15] Article 7-1 alinéa 4 statut universel du juge : « *La procédure disciplinaire est soumise au droit au procès équitable. Le juge doit avoir accès à la procédure et bénéficier de l'assistance d'un avocat ou d'un pair. Les décisions disciplinaires doivent être motivées et peuvent faire l'objet de recours devant un organe indépendant* »

[16] https://www.eods.eu/library/UN_ICCPR_1966_FR.pdf

L'ONU procédera à l'examen périodique universel de la Tunisie en novembre prochain[17]. Il parait sans doute intéressant que l'UIM, aux côtés de l'AMT et des organisations associatives et syndicales tunisiennes, se joigne à cette démarche, et grâce à nos représentants à Vienne et Genève, interviennent pour faire connaitre notre position.

Il importe aussi que se mettent en place des actions concertées des membres de l'UIM vis-à-vis de leurs propres gouvernements et institutions judiciaires afin d'inciter celles-ci à agir ou réagir. Ce rapport peut à cet égard servir de base à des discussions et actions de sensibilisation.

Face à cette situation très inquiétante, assurément la plus grave depuis celle qui a frappé nos collègues turcs il y a quelques années, il importe que l'UIM joue pleinement son rôle en étant aux cotés de l'AMT, association membre, dont les actions remarquables de ces derniers mois sont à saluer.

Christophe REGNARD
Président du Tribunal judiciaire de Tours
Président d'honneur de l'Union Internationale des Magistrats

[17] https://www.ohchr.org/fr/hr-bodies/upr/tn-index



INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI

**Conférence débat – Tunis 6 juillet 2022**

**Les garanties et droits des magistrats dans les procédures disciplinaires**

**Intervention de Christophe REGNARD**

**Président du Tribunal Judiciaire de Tours**
**Président d'honneur de l'Union Internationale des Magistrats**

Monsieur le Président de l'Association des Magistrats Tunisiens, Madame la vice-présidente, mesdames et messieurs, chers collègues et amis,

Je tenais à vous remercier pour cette invitation à Tunis. J'aurai préféré y venir dans d'autres circonstances et des moments moins difficiles pour vous tous.

Mais je suis heureux de pouvoir m'exprimer devant vous pour rappeler ce qu'impérativement doivent être les protections des magistrats, non pas dans leur propre intérêt, comme certains peuvent le dire, mais dans l'intérêt des justiciables et finalement de la démocratie.

Accorder des droits aux magistrats, notamment des garanties d'indépendance, leur imposer des devoirs, notamment en matière d'éthique, organiser les procédures disciplinaires n'est en effet pas, pour paraphraser le préambule de la Recommandation 2010/12 du Conseil de l'Europe, « *un privilège des juges mais une garantie du respect des droits de l'homme et des libertés fondamentales qui permet à toute personne d'avoir confiance dans le système judiciaire* ».

Il ne peut en effet y avoir de démocratie sans une justice indépendante et il ne peut pas y avoir de justice indépendante sans garanties pour les juges sur leurs carrières et leur discipline, le principe étant de soustraire ces questions au pouvoir politique.

Avant d'aller plus avant, je tenais à vous apporter le soutien de toute l'UIM dans votre combat, et notamment celui de notre président, Jose IGREJA MATOS, de notre secrétaire général, Giacomo OBERTO et de la présidente du groupe africain de l'UIM, Marcelle KOUASSI.

Je leur rendrai bien sûr compte de ma mission et de nos rencontres et nous aurons l'occasion en septembre pendant la prochaine réunion plénière de vous apporter un soutien supplémentaire.

C'est en effet l'un des objectifs prioritaires de l'UIM, créée en 1953, d'aider les magistrats dans leurs combats et de promouvoir nos valeurs communes.

Je sais combien l'AMT a été active depuis des années et son adhésion à l'UIM à Rome en 1961 pour aider les magistrats dans le monde. Aujourd'hui c'est à nous de vous aider et je rends hommage à votre combat du moment.

Depuis février et la tragique dissolution du conseil de Justice, l'UIM a eu l'occasion de dénoncer les évolutions de la justice en Tunisie.

Elle l'a fait en prenant publiquement position en février[1], mai[2] et juin[3] 2022 et en appelant le président tunisien de la République à revenir dans les normes démocratiques applicables ailleurs dans le monde. Elle l'a fait aussi en sensibilisant les différentes instances de l'ONU, notamment M. Diego GARCIA SAYAN, rapporteur spécial sur l'indépendance des juges et avocats.

Elle a accueilli avec satisfaction les déclarations de la Haut-Commissaire des Nations Unies aux droits de l'homme, Michelle Bachelet hélas récemment démissionnaire, qui a, avec force, à Genève en février

[1] **Résolution du 11 février 2022**
L'Union Internationale des Magistrats (UIM) dont le principal but est la sauvegarde de l'indépendance du pouvoir Judiciaire, condition essentielle de la fonction juridictionnelle et de la garantie des droits et libertés de l'homme, considère que la dissolution du Conseil Supérieur de la Magistrature, organe du pouvoir judiciaire :
- Porte gravement atteinte à l'Etat de droit qui se caractérise par une séparation des différents pouvoirs, exécutif, législatif et judiciaire,
- Constitue une énorme entrave à l'indépendance du juge, indispensable à l'exercice d'une justice impartiale, contre toutes sortes de pressions sociales, économiques et politiques ;
L'Union Internationale des Magistrats exprime sa solidarité aux Magistrats tunisiens et aux membres du Conseil Supérieur de la Magistrature dans leur lutte pour un pouvoir judiciaire indépendant, intègre et garant des droits et libertés selon les normes internationales ;
- Elle recommande vivement l'abrogation de cette décision pour préserver l'indépendance de la justice, fondement de l'Etat de droit et garantie indispensable des droits et libertés de chacun.
- Elle exhorte le Pouvoir Exécutif à prendre toutes les mesures nécessaires pour assurer la protection de l'intégrité physique et morale des Magistrats et des membres du Conseil Supérieur de la Magistrature aussi bien dans l'exercice de leurs fonctions que dans leur vie de citoyen et garantir la même protection à leurs familles respectives.
- Elle l'invite, par ailleurs à se conformer aux recommandations des Organisations de défense des droits de l'homme auxquelles la Tunisie a librement adhéré.

[2] **Résolution Groupe africain 10 mai 2022**
Considèrent que l'indépendance d pouvoir judiciaire, la séparation des pouvoirs et l'Etat de droit ne peuvent être rétablis que si le Conseil Supérieur de la Magistrature élu selon la loi organique n° 36 du 28 avril 2016 est réinstallé et
que l'ordre constitutionnel est réinstauré.
- Elles recommandent vivement l'abrogation du décret-loi n° 11 du 12 Février 2022 pour préserver l'indépendance de la justice, fondement de l'Etat de droit et garantie indispensable des droits et libertés de chacun.
- Elles Exhortent le pouvoir exécutif au respect des engagements de la Tunisie selon les traités ratifiés en rapport avec les principes de l'indépendance du pouvoir judiciaire
- Elles exhortent également, le Pouvoir Exécutif à prendre toutes les mesures nécessaires pour assurer la protection de l'intégrité physique et morale des Magistrats tunisiens et des membres du Conseil Supérieur de la Magistrature légitime, aussi bien dans l'exercice de leurs fonctions que dans leur vie de citoyen, et garantir la même protection à leurs familles respectives.
- Elles l'invitent, par ailleurs, à se conformer aux recommandations des Organisations de défense des droits de l'homme auxquelles la Tunisie a librement adhéré.
- Elles expriment leurs vives inquiétudes quant à toute mesure disciplinaire arbitraire à l'encontre des magistrats dans l'exercice de leur droit de réunion et d'expression, pour défendre l'indépendance de la justice et de ses institutions, et pour faire face à toute tentative de contrôle par le pouvoir exécutif.

[3] **Résolution comité présidence 11 juin 2022**
L'indépendance du pouvoir judiciaire est une pierre angulaire de l'État de droit et doit être garantie par l'Etat qui a le devoir d'assurer la séparation des pouvoirs, exécutif, législatif et judiciaire.
Le Statut Universel du Juge, en conformité avec les Principes Fondamentaux des Nations Unies relatifs à l'Indépendance de la Magistrature, stipule à son article 7-1 que les procédures disciplinaires contre les juges « doivent relever d'un organe indépendant comportant une majorité de juges ou d'un organe similaire » et doivent, en tous cas, être « soumises au droit au procès équitable » ; en cas de sanctions disciplinaires, elles doivent « répondre au principe de proportionnalité ».
Le décret présidentiel n° 516-2022 du 1er Juin 2022 par lequel le Président de la République de la Tunisie s'est donné le pouvoir de révoquer, sommairement et immédiatement 57 magistrats, constitue une grave violation des règles élémentaires caractérisant l'État de Droit et une infraction intolérable au principe de la séparation des pouvoirs.
Par conséquent, le Comité de la Présidence de l'UIM, la plus grande organisation de juges au monde, rassemblant les associations nationales de 94 pays, demande que ce décret soit abrogé et que les éventuelles procédures disciplinaires contre ces magistrats soient soumises à des règles internationalement consacrées, qui garantissent une procédure équitable, impartiale, susceptible de recours et non contrôlée par le pouvoir exécutif.



dénoncé la dissolution du CSM [4]. J'ai rencontré ce matin la représentante à Tunis du haut-commissaire aux droits de l'Homme, qui n'a pas caché ses inquiétudes

Ne lâchez rien parce que votre combat d'aujourd'hui, c'est celui que nous menons aussi en Turquie, en Pologne, en Hongrie, au Guatemala.

Dans un contexte d'attaques généralisées dans le monde contre les magistrats, mais aussi les avocats, et finalement tous ceux qui défendent des valeurs démocratiques et le respect des droits de l'homme, céder ici c'est risquer la contagion.

Je suis dès lors évidemment à vos côtés et pour tout dire très impressionné par votre combat. Vous faites honneur à la magistrature.

Vous m'avez demandé, Madame la vice-présidente d'évoquer aujourd'hui les droits et garanties des magistrats dans les procédures disciplinaires.

Avant d'aborder ces sujets, je voudrais rappeler des principes généraux, qui figurent dans l'article 1er du statut international du juge adopté par l'UIM à Santiago du Chili en 2017.

Je le fais parce que ce sont ces principes, dans toutes leurs dimensions, qui assurent au juge de pouvoir travailler hors de toute pression :

*« Le pouvoir judiciaire, garant de l'existence de l'Etat de droit, constitue l'un des trois pouvoirs de tout Etat démocratique.*
*Dans l'ensemble de leurs activités, les juges garantissent les droits de chacun au bénéfice d'un procès équitable. Ils doivent mettre en œuvre les moyens dont ils disposent pour permettre aux affaires d'être appelées en audience publique dans un délai raisonnable, devant un tribunal indépendant et impartial établi par la loi, en vue de déterminer les droits et obligations en matière civile, ou la réalité des charges en matière criminelle.*
*L'indépendance du juge est indispensable à l'exercice d'une justice impartiale dans le respect de la loi. Elle est indivisible. Elle ne constitue pas une prérogative ou un privilège accordé dans l'intérêt personnel des juges, mais dans celui de l'Etat de droit et de toute personne demandant et attendant une justice impartiale.*
*Toutes les institutions et autorités, qu'elles soient nationales ou internationales, doivent respecter, protéger et défendre cette indépendance ».*

Nous en sommes hélas de plus en plus loin ici à Tunis.

## 1 – Les magistrats ne sont pas au-dessus des lois, ils doivent être responsables de leurs actes, c'est la garantie de la confiance des justiciables dans la justice

Ceci explique le travail mené par l'UIM avec l'UNODC dans le cadre du processus de la déclaration de Doha sur l'éthique judiciaire et la lutte contre la corruption dans le domaine judiciaire.

[4] Declaration de M BACHELET – Geneve 8 fevrier 202

Mon propos n'est donc en rien de dire que les magistrats ne doivent pas rendre des comptes de leur action.

Chantal Arens, première présidente de la Cour de Cassation française, inaugurant un cycle de conférence sur indépendance et responsabilité écrivait, en mars 2021 :

*« Le magistrat est détenteur, sur ses concitoyens, d'importants pouvoirs qui touchent à leur liberté, leur honneur, leur sécurité ou leurs intérêts familiaux, sociaux et matériels. La contrepartie de ces pouvoirs, dans toute démocratie, est la responsabilité de ceux qui les exercent, fondée sur une compétence irréprochable, une formation de haut niveau, une impartialité ainsi qu'une éthique et une déontologie sans faille ».*

Et partout dans le monde, les magistrats rendent des comptes dans des cadres différents :

- Responsabilité pénale (qui pose la question des privilèges de juridiction, voire de l'immunité)
- Responsabilité éventuellement civile (dans le cadre d'une action récursoire après condamnation de l'Etat)
- Responsabilité disciplinaire bien sûr

Mais l'engagement de la responsabilité d'un juge impose des garanties, parce que seules ces garanties permettent de respecter un autre principe essentiel qui assoit l'indépendance du juge : son inamovibilité.

***Article 2-2 – Inamovibilité***

*« Les juges, qu'ils soient nommés ou élus, sont inamovibles tant qu'ils n'ont pas atteint l'âge obligatoire de la retraite ou la fin de leur mandat.*
*Le juge est nommé sans limitation de durée. S'il devait l'être pour une période limitée, les conditions de sa nomination doivent permettre de s'assurer que l'indépendance du système judiciaire ne soit pas en danger.*
*Un juge ne peut recevoir une affectation nouvelle ou même une promotion, sans son consentement.*
***Un juge ne peut être déplacé, suspendu, ou démis de ses fonctions que dans les cas prévus par la loi et dans le respect de procédures disciplinaires, assurant le respect des droits de la défense et le principe du contradictoire ».***

**2 – L'engagement de la responsabilité d'un juge impose des protections particulières :**

2-1 – Aucun engagement de responsabilité pour une décision de justice rendue

La contestation d'une décision de justice s'opère par l'exercice des voies de recours.

La décision de justice elle-même ne peut donc jamais être à l'origine d'une sanction :

Dans son rapport d'activité de 2006, le CSM français rappelait que *« la décision juridictionnelle ne peut être critiquée que dans le cadre des voies de recours ordinaires ou extraordinaires. L'absence de responsabilité du juge à raison de ses décisions juridictionnelles est un principe fondamental lié à l'indépendance de l'autorité judiciaire. Contrairement à ce que d'aucuns pourraient croire, ce principe est posé non pas dans l'intérêt des magistrats mais bien dans celui des justiciables qui doivent être assurés de disposer d'une justice indépendante et sereine ».*
Il y a quelques rares exceptions disait le même rapport :

*« Ce principe cède toutefois lorsque l'acte en cause n'a que l'apparence d'un acte juridictionnel en raison notamment de manquements graves et réitérés par un magistrat aux devoirs de son état, constitués par des violations des règles de compétence et de saisine de sa juridiction, sous réserve que les faits reprochés aient été établis dans des décisions juridictionnelles devenues définitives ».*



**L'article 7-1 al 3 du statut universel du juge** ne dit pas autre chose :

*« Sauf malveillance ou négligence caractérisée constatées dans une décision de Justice devenue définitive, aucune poursuite disciplinaire ne peut être engagée contre un juge en raison de l'interprétation du droit ou de l'appréciation des faits ou l'évaluation des preuves auxquelles il a procédé ».*

2 – 2 – Des décisions disciplinaires nécessairement prises par la Justice ou par un organe disciplinaire indépendant

Selon **l'article 7-1 al 2 du statut universel du juge :** *« Les procédures disciplinaires doivent relever d'un organe indépendant comportant une majorité de juges, ou d'un organe équivalent ».*

Cet organe c'est évidemment le plus souvent le conseil de Justice.

Or, selon **l'article 2-3 du statut universel du juge :**
*« Pour assurer l'indépendance des juges, sauf dans les pays ou par tradition cette indépendance est assurée par d'autres moyens, un Conseil de Justice, ou un autre organe équivalent, doit être institué.*
*Le Conseil de Justice doit être totalement indépendant des autres pouvoirs de l'Etat.*
*Il doit comporter une majorité de juges élus par leurs pairs suivant des modalités garantissant la représentation la plus large de ceux-ci.*
*Le Conseil de Justice peut avoir pour membre des non-magistrats afin de représenter la diversité de la société civile. Pour éviter toute suspicion, ces membres ne peuvent être des politiciens. Ils doivent avoir les mêmes qualités d'intégrité, d'indépendance, d'impartialité et de compétences que les juges. Aucun membre du gouvernement ou du parlement ne peut être en même temps membre du Conseil de Justice.*
*Le Conseil de Justice doit être doté des plus larges compétences en matière de recrutement, formation, nomination, promotion et discipline des juges.*
*Il doit pouvoir être consulté par les autres pouvoirs de l'Etat sur toutes questions relatives au statut de la magistrature et à la déontologie des juges, de même que sur tous les sujets relatifs à la détermination annuelle du budget de la Justice et l'allocation des ressources aux juridictions, à l'organisation, au fonctionnement et à l'image des institutions judiciaires* ».

2 – 3 – Des poursuites disciplinaires ne peuvent être engagées que sur la base de textes existant préalablement (principe de légalité des poursuites)

Selon **l'article 7-1 dernier alinéa du statut universel du juge,** « *Les sanctions disciplinaires à l'encontre d'un juge ne peuvent être prises que pour des motifs initialement prévus par la loi, en observant des règles de procédure prédéterminées. Elles doivent répondre au principe de proportionnalité* ».

2 – 4 – des garanties procédurales doivent exister : respect du principe du procès équitable

**Selon l'article 7-1** : « *La gestion administrative et disciplinaire des membres du pouvoir judiciaire est exercée dans des conditions permettant de préserver leur indépendance, et se fonde sur la mise en œuvre de critères objectifs et adaptés (…). La procédure disciplinaire est soumise au droit au procès équitable. Le juge doit avoir accès à la procédure et bénéficier de l'assistance d'un avocat ou d'un pair. Les décisions disciplinaires doivent être motivées et peuvent faire l'objet de recours devant un organe indépendant* »

Le juge doit donc :

- Etre informé de l'existence de la procédure contre lui, par une notification officielle de l'organe en charge des poursuites ou de celui en charge de la suite de la procédure disciplinaire
- Il doit pouvoir disposer d'une copie de la procédure diligentée contre lui
- Il doit pouvoir être assisté d'un avocat ou d'un pair pour se défendre
- Il doit être entendu pour pouvoir fournir ses explications sur les charges pesant contre lui
- Les décisions rendues contre lui doivent être motivées
- Il doit pouvoir en faire appel ou se pourvoir en cassation (essentiel en Europe puisque l'épuisement des voies de recours interne est le seul moyen de pouvoir saisir la CEDH)
-

2-5 – les responsabilités pénales et civiles sont nécessairement distinctes de la responsabilité disciplinaire

**Des organes différents et donc des procédures différentes**

Les responsabilités civiles et pénales appartiennent aux organes juridictionnels de droit commun (qui obéissent normalement aux mêmes règles de respect du procès équitable). Les décisions étant en outre, dans ce cadre, rendues par des magistrats indépendants.

**Art 7-2 1er alinéa :**
*« Lorsqu'elle est admise, l'action civile dirigée contre un juge, comme l'action en matière pénale, éventuellement l'arrestation, doivent être mises en œuvre dans des conditions qui ne peuvent avoir pour objet d'exercer une influence sur son activité juridictionnelle.*

Dans certains pays, il existe des privilèges de juridiction, pour soustraire les magistrats à la justice ordinaire. Ça n'est pas le cas en France, ou seules des procédures de récusation et de délocalisation sont prévues pour assoir les principes d'impartialité

**Un lien nécessaire**

Si est engagée une procédure pénale contre un magistrat, celle-ci n'emporte pas de droit une suspension d'exercice des fonctions de magistrat.

Elle impose si une suspension parait nécessaire l'engagement d'une procédure disciplinaire, la décision de suspension appartenant alors au conseil de justice (ITE) après respect des principes du procès équitable : notification des griefs, droit à la présence d'un avocat, droit d'être entendu et défendu, droit de recours.

En France, nous bénéficions d'une autonomie du droit disciplinaire :

+ Pas d'application de la règle non bis in idem entre droit pénal et droit disciplinaire
+ Le juge disciplinaire ne peut remettre en cause l'appréciation du juge pénal sur la matérialité des faits

Il en est de même en matière de responsabilité civile : la décision de condamnation du service public de la justice (action en réparation) ne peut par elle-même entrainer une sanction civile (action récursoire) contre le magistrat ayant rendu la décision

Il faut encore qu'une instance puisse déterminer si le magistrat en question a commis une faute lourde seule à même de permettre d'engager sa responsabilité civile personnelle

**Art 7 -2 dernier alinéa :** *« Sauf en cas de faute volontaire, il ne convient pas que dans l'exercice de ses fonctions judiciaires, un juge soit exposé à une responsabilité personnelle, même par le biais d'une action récursoire de l'État ».*



**CONCLUSION**

J'ai sans doute été trop long, mais c'était pour vous montrer que ce qui se passe en Tunisie depuis février est totalement en opposition avec les règles internationalement reconnues :

Un conseil de justice dissous et un conseil provisoire à la composition irrégulière
Des révocations directes par le pouvoir exécutif
Des mises en cause disciplinaires ayant des conséquences au plan pénal
Des mises en cause fondées sur des décisions juridictionnelles
Une absence de notification des charges
Une absence totale de droits et la négation des principes du procès équitable
Une absence de recours

Je ne peux donc, comme le comité de présidence de l'UIM à l'occasion de sa réunion à Vérone le 11 juin dernier que dire que :

« *Le décret présidentiel n° 516-2022 du 1er Juin 2022 par lequel le Président de la République de la Tunisie s'est donné le pouvoir de révoquer, sommairement et immédiatement 57 magistrats, constitue une grave violation des règles élémentaires caractérisant l'État de Droit et une infraction intolérable au principe de la séparation des pouvoirs.*

*Par conséquent, le Comité de la Présidence de l'UIM (...) demande que ce décret soit abrogé et que les éventuelles procédures disciplinaires contre ces magistrats soient soumises à des règles internationalement consacrées, qui garantissent une procédure équitable, impartiale, susceptible de recours et non contrôlée par le pouvoir exécutif* ».

Je vous remercie

INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI

## Programme de la visite du Président d'honneur
## De l'Union Internationale des Magistrats

**05 – 07 Juillet 2022**

**Premier jour de la visite 05 Juillet 2022**

16h30 – 18h00 Rencontre avec l'Association des Magistrats Tunisiens et les membres de la coordination des structures judiciaires (Bureau AMT)

18h00 – 19h00 Rencontre avec les magistrats révoqués (Club des magistrats)

19h00 - 20h00 Rencontre avec les magistrats en grève de la faim (Club des magistrats)

21h00 – 22h30 Diner avec AMT et partenaires (Restaurant à Tunis)

**Deuxième jour de la visite 06 Juillet 2022**

09h00 – 12h30 Rencontres avec les autorités officielles (à confirmer)

12h30 - 14h00 Déjeuner avec les partenaires (Restaurant à Tunis)

14h30 – 15h30 rencontre avec le comité civil de l'indépendance de la justice

15h30 – 17h30 Conférence débat

18h00 – 19h00 Rencontre avec la société civile ONG nationales et internationales

20h30 – 22h30 Diner

**Troisième jour de la visite 07 Juillet 2022**

09h00 – 10h00 Rencontre avec les partenaires de l'AMT : ASF, ICJ, EUROMED (Bureau de ASF)

11h00 - 12h30 Conférence de presse (Club des magistrats)

12h30 13h30 Clôture de la mission et déjeuner

14h00 Départ vers l'aéroport



## 2022 Declaration in favour of the President of AMG (Guinea)

### STATEMENT

**The Member Associations of the African Regional Group of the International Association of Judges (IAJ)** have been informed that Mohamed DIAWARA, President of the Association of Judges of Guinea (AMG), has been unjustly suspended from his duties as Special Prosecutor and subsequently replaced in violation of Organic Law L/054/CNT/2013 of 17 May 2013, on the status of Judges in Guinea.

Indeed, following declaration **No. 003 of August 13, 2022**, **the Board of Directors of the AMG**, through the voice of its President, invited by public statement, **Mr. Alphonse Charles WRIGHT**, Judge, Guinean Minister of Justice **"to comply with the texts that govern the prosecution of persons who are accused of acts likely to constitute offenses, in the proceedings brought against Judge Pierre LAMAH, President of the Commercial Court".**

In reaction to this statement, the Minister of Justice has taken the following measures:

1- Order No. A/2022/1991/MJDH/CAB/SGG of 16 August 2022 of the Minister of Justice and Human Rights, suspending **Mr. Mohamed DIAWARA**, Special Prosecutor, President of the Association of Judges of Guinea, on the grounds of: ***"serious breach of duty of his condition, to the honor, delicacy or dignity of his profession and to the act contrary to his oath as Magistrate with immediate effect from the direct referral to the Superior Council of the Judiciary".***

2- Order No. A/2021/2116/MJDH/CAB/SGG of 25 August 2022 of the Minister of Justice and Human Rights, appointing an interim chief prosecutor to replace **Mr. Mohamed DIAWARA.**

**The Member Associations of the African Regional Group**, on the occasion of **the 64th annual meeting of the International Association of Judges**, taking note of these measures, note that they have been taken against this Judge in the exercise of his functions as President of the Association.

**They** wish to recall that by virtue of the freedom of expression, belief, association and assembly conferred on the Judges of Guinea by **Article 23 of Organic Law L/054/CNT/2013 054 of 17 May 2013** on the status of Judges in Guinea, the President of the Board of Directors or any other elected and/or appointed Judge, has the right, on behalf of all Judges of Guinea, to take part in public debates concerning the law, the administration of justice, the promotion and protection of human rights, without suffering any professional prejudice.

Consequently, **the Member Associations of the African Regional Group of the International Association of Judges** disapprove of all the measures taken against the President of the Association of Judges of Guinea (AMG).

**They** extend their unwavering support to the President and all the members of the AMG.

**They** invite the Guinean Minister of Justice to withdraw the decisions taken against the President of the Association of Judges of Guinea.

Tel Aviv, Israel, on 18 September 2022

## 2022 Declaration Tunisia

### Resolution on Tunisia

The Central Council of the IAJ, gathered on the occasion of its 64th annual meeting in Tel Aviv (Israel), was informed of the situation of justice in Tunisia and unanimously adopted the following resolution.

It recalls that:

- the dissolution of the legitimate High Council of the Judiciary and its replacement by a provisional Council whose majority of members is appointed by the President of the Republic violates international standards and in particular Article 2-3 of the Universal Charter of the Judge approved by the Central Council of the IAJ in Santiago de Chile in 2017;

- the dismissal of judges by decree of the President of the Republic violates international standards and in particular articles 2-2 and 7-1 paragraph 2 of the Universal Charter of the Judge;

- the implementation of disciplinary and sometimes criminal procedures as a retaliatory measure for decisions made by judges and prosecutors violates international standards and in particular article 7-1 paragraph 3 of the Universal Charter of the Judge;

- the implementation of disciplinary procedures without notification of the charges, without the possibility to defend oneself and without a real right of appeal violates international standards and in particular article 7-1 paragraph 4 of the Universal Charter of the Judge.

In view of these elements, the Central Council gives its full support to the actions of the Association of Tunisian Judges and its leaders to defend the independence of justice and the rule of law in Tunisia.

It recalls that it is the duty of judges to defend these principles and that no action should be taken against them for this reason.

It stresses that the freedom of expression and the right of association of judges must be respected in all circumstances.

It calls on the Tunisian authorities to respect these principles and on the international authorities to use all possible means to encourage them to respect and protect Tunisian judges.

*Tel Aviv (Israel)*

*21 September 2022*



## 2022 Resolution on Tunisia

### STATEMENT

By the Decree-Law 2022-11 of 12 February 2022, the President of the Republic of Tunisia dissolved the High Council for the Judiciary (HCJ) which is the guarantor of the independence and proper functioning of the judiciary and replaced it for a provisional Superior Council whose members were directly appointed by him.

The International Association of Judges (IAJ), of which the Tunisian Association of Judges is a member, by a communication of 06 February 2022, and the African Regional Group of the IAJ, by a statement of 10 May 2022, promptly denounced this measure, which undermines the rule of law, characterized by the separation of powers, and constitutes an undeniable impediment towards the independence of judges.

By a new Decree 2022-516 of 01 June 2022, again the President of the Republic has given himself the power to unilaterally dismiss judges with the prohibition of any kind of appeal against the decision of dismissal, violating once again the principle of the independence of the judiciary and the very foundations of the rule of law.

According to this text, the President of the Republic proceeded with the collective dismissal of 57 judges, without any disciplinary procedure or the possibility of appeal, giving rise to a profound crisis in the Tunisian judiciary.

The IAJ, once again, in a press release dated 11 June 2022, emphasized the existence of a serious violation of elementary rules characterizing the rule of law and an intolerable violation of the principle of the separation of powers and, therefore, requested that this decree was immediately reversed and that any disciplinary proceedings against these magistrates be subject to internationally established rules, which guarantee a fair, impartial, appealable and non-controlled procedure.

The IAJ decided also to organize a mission to Tunisia, led from 7 to 10 July 2022, by Mr. Christophe REGNARD, Honorary President of the IAJ, whose report clearly mentions a catastrophic situation for the Tunisian justice.

In parallel, acting under the law, through a judicial law suit led by the Association of Tunisian Judges, together with other organizations of the judiciary, it was possible to obtain a judicial ruling from the Administrative Court of Tunis, on August 9, 2022, ordering the suspension of the execution of this illicit order to dismiss the concerned judges.

Ignoring all these statements, the Executive Power refused to obey to this Court decision and instead took new measures to circumvent it namely by carrying out irregular

acts tending to prohibit those judges even from accessing their offices and by initiating criminal proceedings against them.

Several bodies within the judiciary, including the Association of Tunisian judges, denounced this current situation and called on the President of the Republic to enforce the decision of the Administrative Court.

The Association of Tunisian judges notes that its President, in this case, Mr. Hmedi ANAS, is being harassed and threatened with criminal procedures simply because of his activities in the Association of Judges, following the legitimate protest movements led by the said Association against the decisions of the President of the Republic.

The International Association of Judges (IAJ), whose main purpose is to safeguard the independence of the Judiciary, an essential condition for the judicial function and to the guarantee of basic human rights and freedoms:

- Denounces, as in previous statements, the various described violations already committed;

- Urge the Tunisian State to avoid all arbitrary disciplinary, or criminal, measures against judges in the exercise of their freedom of association and freedom of expression to defend the independence of the judiciary and its institutions, and to confront any attempt by the executive to control the judiciary;

- Demands adequate respect for the adversarial principle according to which every person must have access to the documents and evidence produced by his opponent, an essential condition of the right of defense and of a fair trial;

- Requests the Executive Power to refrain from initiating any criminal proceedings against judges, because of the peaceful exercise of their rights;

It expresses, once again, its solidarity with Mr. Hmedi ANAS and to all Tunisian judges in their struggle for an independent judiciary, based on long established international standards.

August 17, 2022





# DECLARATION

Member associations of the African Group of the International Association of Judges (IAJ), attending the group's annual meeting in Tunis (Tunisia) that took place from 07 to 10 May 2022, with reference to the dissolution of the Supreme Judicial Council by the President of Tunisia, which is accounted for as the guarantor for the proper functioning of the judicial power and for the respect of its independence, in addition to its replacement by an interim council made up of members directly appointed by the president, set up under Decree-Law No 11 of 12 February 2022 and granting broad prerogatives to the Executive Power in the appointment process of magistrates, in taking disciplinary measures, and interdicting their freedom of expression and association.

Pertaining to the declaration of the International Association of Judges (IAJ), whose main objective is to ensure the independence of the judiciary, being a fundamental condition of the judicial function and of guaranteeing the human rights and freedoms released on 11 February 2022, considering that the dissolution of the Supreme Judicial Council of Tunisia, being an elected and independent body of the judicial power is:

- Seriously undermining the rule of Law state, which is characterized by the separation of the executive, legislative, and judiciary powers,

- Constituting an enormous obstacle to the independence of the judge, being indispensable for the exercise of impartial justice, against all kinds of social, economic and political pressures;

Member associations of the African Group of the International Association of Judges met in Tunis have expressed their legitimate solidarity with the Tunisian judges and the members of the Supreme Judicial Council in their struggle for an independent judicial power, with integrity and guarantor of rights and freedoms according to international standards;

Considering that the independence of the judicial power, the separation of powers, and the rule of law can be retrieved only if the Supreme Judicial Council elected as per the organic law No 34 of 28 April 2016 is put back, and the constitutional order is restored;

- They highly recommend the repeal of the Decree-Law No 11 of 12 February 2022 in order to preserve the independence of the judicial power as the basis of the rule of law and the indispensable guarantee of everyone's rights and freedoms.

- They urge the Executive Power to respect all commitments of Tunisia as per the treaties ratified in accordance with the principles of independence of the judicial power.

- They, also, urge the Executive Power to take all necessary measures in order to ensure the protection of physical and moral integrity of Tunisian magistrates and members of the legitimate Supreme Judicial Council both in the exercise of their functions and in their lives as citizens and to guarantee the same protection to their respective families.

- They also call the Executive Power, to abide by the recommendations of the human rights Organizations to which Tunisia has voluntarily adhered.

- They express their serious concern as to all arbitrary disciplinary measures taken against the magistrates exercising their freedom of association and expression, to defend the independence of judicial power as well as its institutions, and to cope with to all attempts of control by the executive power.

**Edited in Tunis on 10 May 2022**

2022 Declaration on Tunisia

## DECLARATION

On Sunday, February 6, 2022, the President of Tunisia announced the dissolution of the Superior Council of the Judiciary which is the guarantor of the proper functioning of justice and respect for its independence, in order to replace it with a provisional body to be established by presidential decree.

The International Association of Judges (IAJ), whose main purpose is to safeguard the independence of the Judiciary, an essential condition for the judicial function and the guarantee of human rights and freedoms, considers that the dissolution of the Superior Council of the Judiciary, an organ of the judiciary:

- Seriously undermines the rule of law, which is characterised by a separation of the various powers, executive, legislative and judicial,

- Constitutes an enormous obstacle to the independence of the judge, indispensable for the exercise of impartial justice, against all kinds of social, economic and political pressures;

The International Association of Judges expresses its solidarity with the Tunisian Judges and the members of the Superior Council of the Judiciary in their struggle for an independent judiciary, with integrity and guarantor of rights and freedoms according to international standards;

- It strongly recommends the repeal of this decision in order to preserve the independence of the judiciary, which is the foundation of the rule of law and an indispensable guarantee of the rights and freedoms of everyone.

- It urges the Executive Power to take all necessary measures to ensure the protection of the physical and moral integrity of Judges and members of the Superior Council of the Judiciary both in the exercise of their functions and in their lives as citizens and to guarantee the same protection to their respective families.

- It also invites it to comply with the recommendations of the human rights organizations to which Tunisia has freely adhered.

Done on February 11, 2022



2018 Resolution on Liberia_African Group

**Le Groupe Africain de l'Union Internationale des Magistrats**

**The African Group of the International Association of Judges**

## RESOLUTION OF THE AFRICAN GROUP CONCERNING LIBERIA

The International Association of Judges (IAJ) held its 61st meeting at Marrakech, Morocco from 14 to 18 October 2018. The National Association of trial Judges of Liberia is a member of the IAJ; as such, it is a member of the African Regional Group (ARG) of the IAJ.

The African Regional Group was informed by the Liberian delegation that Judges and Magistrates receive about 1% of all benefits received while in active service (vehicle, monthly gasoline, monthly mobile airtime, salary and allowances and quarterly entertainment allowance), as a retirement benefit.

This retirement benefit is grossly insufficient for Judges and Magistrates to live a dignified life commensurate with their status. It is an affront to Judicial independence. If this situation is not urgently addressed, it may lead to some Judges and Magistrates to engage in corrupt practices in order to create a retirement nest egg.

The African Group of the IAJ therefore calls on the Government of Liberia to enact appropriate laws that would allow Judges and Magistrates to live a dignified life commensurate with their status as former Judges and Magistrates.

Le Groupe Africain de l'Union Internationale des Magistrats

The African Group of the International Association of Judges

## RESOLUTION DU GROUPE AFRICAIN DE L'UNION INTERNATIONALE DES MAGISTRATS SUR LA LIBERIA

Lors de la tenue 61eme réunion de l'Union Internationale des magistrats (UIM) à Marrakech (Maroc) du 14 au 18 octobre 2018, l'Association Nationale des Juges du Libéria, membre du groupe régional africain (ARG) de l'UIM, a informé le Groupe que les juges et magistrats du Liberia, qui sont admis à la retraite, reçoivent environ 1% de toutes les prestations reçues pendant leur service actif (salaire et indemnités divers).

Cette pension de retraite ; qui est nettement insuffisante pour permettre aux juges et magistrats une vie digne conformément à leur statut ; est une violation de l'indépendance de la justice. Si cette situation n'est pas traitée de façon urgente, elle peut amener certains juges et magistrats en activité à s'engager dans des pratiques contraires à l'éthique.

Le Groupe Africain de l'UIM recommande au Gouvernement libérien de promulguer des lois appropriées qui permettraient aux juges et aux magistrats de mener une vie digne, proportionnelle à en conformité avec leur ancien statut.



Le Groupe Africain de l'Union Internationale des Magistrats

The African Group of the International Association of Judges

## RESOLUTION DU GROUPE AFRICAIN DE L'UNION INTERNATIONALE DES MAGISTRATS CONCERNANT LE MALI

Lors de la réunion du Groupe Africain, à l'occasion de la tenue de la 61ème réunion annuelle de l'UIM à Marrakech, du 14 au 18 octobre 2018 ;

Les membres du groupe ont été informés par la délégation du Mali ;

Qu'un groupe de Magistrats de leur pays, a entamé, depuis trois mois, une grève illimitée ;

Cette grève a eu des conséquences néfastes sur les droits de l'homme et des justiciables, causant beaucoup de torts ;

Devant cette situation, le Groupe Africain, demande unanimement aux magistrats grévistes d'obéir aux règles du Droit de grève et de se conformer à l'avis de la Cour Suprême du Mali ;

Le Groupe Africain souligne que ce pays est régi par des règles de démocratie et que tout le monde doit obéir à ces règles, y compris et surtout les magistrats.

Le Groupe Africain de l'Union Internationale des Magistrats

The African Group of the International Association of Judges

## RESOLUTION OF THE AFRICAN GROUP OF THE INTERNATIONAL ASSOCIATION OF JUDGES CONCERNING MALI

The IAJ held its 61st meeting at Marrakech, Morocco, from 14 to 18 October 2018. During this occasion the African Regional Group also held its meeting.

The ARG was informed by the Malian delegation about judges that embarked on strike action in Mali.

We were also informed that the strike has far reaching consequences for litigants and the human rights of accused persons.

The ARG unanimously resolved to implore all judges who are currently engaged in such industrial action to obey the rule of law and to consider the opinion of the Supreme Court.

We emphasize that Mali is a democratic country governed by laws and all persons, including judges, should respect and obey the laws of the land.





## 20 ème REUNION DU GROUPE REGIONAL AFRICAIN DE l'UIM ALGER 31 Mai au 03 Juin 2015

L'an 2015, du 31 Mai au 02 Juin, s'est tenue à Alger la 20ème Rencontre Annuelle du Groupe Régional Africain de l'Union Internationale des Magistrats, organisée par le Syndicat National des Magistrats d'Algérie autour du thème central intitulé :

**« LUTTE ANTITERRORISTE ET DROITS DE L'HOMME »**

**RECOMMANDATIONS**

Les magistrats des pays participants à la rencontre, après débats et échanges fructueux, ont formulé les recommandations suivantes :

1- le renforcement du contrôle du pouvoir judiciaire, garant des droits et libertés fondamentaux, sur les mesures restrictives, en vue de concilier la nécessité du combat contre le terrorisme avec les exigences des droits de l'homme ;

2- le renforcement de la coopération qui nécessite une meilleure organisation et une sélection rigoureuse des demandes d'extradition en vue d'en assurer les chances de succès ;

3- la création de cadres d'échanges et de concertation entre les différents acteurs impliqués dans la lutte, tant au niveau national, sous-régional, régional et international, en vue de rendre les dispositifs plus performants ;

4- pour le Groupe Africain de l'UIM, il est essentiel que les États s'engagent à criminaliser certains comportements. Sur ce point, considérant que le payement de rançon aux terroristes est une des formes de financement du terrorisme, le groupe recommande avec insistance son incrimination par la communauté internationale ;

5- la création des juridictions spécialisées dans les domaines du terrorisme et du crime organisé, tels, la cybercriminalité, le trafic de drogues ;

6- la création de structures nationales de lutte contre le terrorisme ainsi que leur dotation et équipement à la dimension de l'enjeu de la menace ;

7- l'harmonisation des dispositifs et la coordination des actions de lutte au niveau national, en encourageant une approche régionale dans l'élaboration et la mise en œuvre des instruments internationaux ;

8- la conception et la mise en œuvre, aux plans sous régional, régional et international, de mécanismes permettant de dépasser les blocages découlant des frontières, en vue d'une application efficiente des outils de coopération judiciaire, en encourageant la mise en place des plates formes judiciaires.

9- l'élaboration et la mise en œuvre d'un programme d'action contre le terrorisme clairement défini, par un groupe de travail multidisciplinaire ;

10- le renforcement des capacités des acteurs impliqués dans les poursuites, par le perfectionnement régulier, la spécialisation et la formation continue ;

11- la prise de mesures visant à garantir les droits des victimes d'actes terroristes.

12- Le Groupe Africain enregistre les résultats de la réconciliation en Algérie et estime que cette expérience est un modèle de référence en la matière qui a été initié par le Président de la République, Monsieur Abdel Aziz Boutéflika dit Abdel Kader El Mali.



En dernier lieu le Groupe Africain insiste auprès de la Présidence et du Secrétariat Général de l'UIM afin que les présentes recommandations soient portées au niveau des instances compétentes de la communauté internationale.

Les délégations remercient et félicitent les frères d'Algérie, à travers Monsieur Djamel Aidouni, Président du SNMA pour la parfaite organisation de la rencontre et pour avoir créé un excellent cadre d'échanges.

Le Groupe apprécie et reste sensible à la chaleur de l'accueil qui n'est point une surprise pour qui connait la capacité du grand peuple Algérien et son hospitalité légendaire.

Alger, le 2 Juin 2015.

## 20 th MEETING OF THE AFRICAN REGIONAL GROUP OF THE IAJ

## ALGIERS, 31 MAY TO 3 JUNE 2015

The year 2015, from 31st May to 2nd June, in Algiers, the 20th Meeting of the African Regional Group of the IAJ took place under the organisation of the *Syndicat National des Magistrats d'Algérie* ; following topic was debated:

## « THE FIGHT AGAINST TERRORISM AND HUMAN RIGHTS »

**RECOMMANDATIONS**

Judges and Prosecutors of the countries participating in the meeting, after profitable debates and exchanges, made the following recommendations:

1- That the judiciary should have more power to ensure that there is a balance between the need to combat terrorism and the respect for human rights.

2- There should be co-operation between nations to ensure effective and efficient handling of extradition requests.

3- Creation of networks for communication and dialogue between stakeholders in order to ensure that the fight against terrorism is coordinated at national, sub-regional, regional and international level.

4- The payment of ransom should be penalised because it is an essential source of income for terrorists.

5- Specialised courts dealing with terrorism, organised crime, drug trafficking and cybercrime should be created.

6- National structures for the fight against terrorism should be created.



7- Legal instruments should be implemented.

8- Effective cross-border mechanism should be set-up and implemented to prevent cross border terrorist attacks.

9- Developping an action plan against terrorism, through a multidisciplinary working group.

10- Improving the capacity of actors involved in the prosecution of these hind of crimes through specialization and continuous training.

11- Adoption of measures aimed at guaranteeing the rights of victims of terrorist acts.

12- The African Group takes note of the results of the reconciliation in Algeria and estimates that this experiment is a model of reference in this matter, which was initiated by the President of the Republic, Mr Abdel Aziz Boutéflika, also known as Abdel Kader El Mali.

Lastly the African Group insists with the Presidency and the Secretariat-General of the IAJ that present recommendations be carried on at the level of competent authorities of the international community.

The delegations thank and congratulate brothers of Algeria, through Mr Djamel Aidouni, President of the SNMA for the perfect organization of the meeting and for having created an excellent environment for exchanges.

The Group appreciates and remains sensitive to the warmth of the reception, which is not a surprise for those who know the capacity of the great Algerian people and his legendary hospitality.

Algiers, 2nd June 2015.

2014 Resolutions of the African Group

INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI
PALAZZO DI GIUSTIZIA - PIAZZA CAVOUR - 00193 ROMA - ITALY

**Conference Resolutions on the Topic:**
**"The Judges and the Fight against Corruption and Impunity"**

Mr. Adam Adji read out a summary of the deliberations of the 19th meeting of the African Regional Group of the IAJ and the following resolutions, addressed to the respective States and judges,were taken:

We urge our States to:

1. protect judges against all forms of pressure,
2. improve the living and working conditions of judges,
3. re-examine laws relating to the appointment and discipline of judges in a cooperative manner,
4. remove all influence of the Ministries of Justice on prosecutors.

We urge judges to constantly bear their oath of office in mind, an oath they committed themselves to respect irrespective of any other considerations.

Niamey, 5th June 2014



## EAJ

**2013**

- Appeal for a Judiciary of Quality- St.Gallen
- Resolution on the reform of the Spanish General Council of the Judiciary- St. Gallen

**2014**

- EAJ letters on Turkey
- EAJ's letter on Greece
- Resolution on the security of Judges in Ukraine
- Resolution on the election of the Turkish High Council of Judges and Prosecutors (Cyprus)
- EAJ Resolution on Slovakia

**2015**

- Statement from the European Association of Judges (EAJ) on the appointment of Judges for the European Court of Justice
- Statement from the European Association of Judges (EAJ): the assises de la justice- what has come out of it
- EAJ Resolution on Turkey
- Statement from the European Association of Judges (EAJ on the proposal from the European Commission on a new investment court system
- EAJ Resolution on Ukraine

**2016**

- EAJ Letter on International Cooperation Programmes with Turkey

**2017**

- Resolution on Greece
- EAJ Resolution on Bulgaria

**2018**

- EAJ resolution on Poland
- EAJ-Resolution on the UN-Basic Principles of judicial independence
- Resolution on Turkey
- Resolution on Serbia

**2019**

- EAJ Resolution on Poland
- Resolution of the EAJ on Poland

**2020**

- March of the 1000 Robes in Warsaw

**2021**

- Resolution on Greece
- Resolution on Slovakia
- EAJ resolution on Poland
- The judiciary: possible ways of development. (March of a Thousand Robes One Year Later)

**2022**

- EAJ resolution on Ukraine
- EAJ resolution on Poland
- The March of a Thousand Gowns two years later

**2023**

- EAJ statement on the situation in Israel
- Lawsuit to the ECJ against E. Council and E. Commission



## 2013 Appeal for a Judiciary of Quality- St.Gallen

*"Access to an effective justice system is an essential right at the foundation of European democracies and enshrined in the constitutional traditions common to the Member States. It is crucial for the effectiveness of all EU law, in particular the EU economic laws that contribute to growth."*
The EU Justice Scoreboard, Communication from the European Commission, March 2013

**Appeal of the European Association of Judges: for a Judiciary of Quality, Efficiency and Independence in Europe.**

14 years ago the European Council in Tampere established the area of freedom, security and justice as one of the main fields for political activities in the European Union. Justice, accessible to all citizens, was identified in 1999 by the heads of the national governments as essential for the prosperity and peace of the Europe.

Major work was done by the European institutions and the member states to promote the area of freedom, security and justice by establishing a wide range of legal instruments to promote the principles of common recognition and mutual trust for cross border cases. However, neither the European institutions nor the member states themselves paid much attention to the situation of the judiciaries in the member states. Although essential for the application of both European and national law, judges in the member states, their standing within their societies, their economical situation and their independence as well as the facilities of the court systems, have been neglected by national governments in the member states. That neglect of the area of freedom, security and justice is particularly noticeable in its most important part - the judges and prosecutors, whose daily

work in court ensures that freedom, security and justice is delivered to all European citizens every day.

At last, with the publication of the EU Justice Scoreboard in March 2013, the European Commission has started to advance the importance of the judiciary for economic growth and well-being. The European Association of Judges (EAJ) congratulates the European Commission for this undertaking and stresses the need to take the Scoreboard as a basis for deeper political discussion about the situation of the judiciary in all member states. The EAJ is prepared to participate in these discussions and is ready to call on institutions at European and national level to fight for strong and independent judicial systems.

To take this discussion further the EAJ stresses two approaches as essential:

- Widening the scope of the Scoreboard:

The EU Justice Scoreboard has focused so far on the importance of the judiciary for economic growth. However, the functioning of the judicial systems is equally important in all other aspects of social life. Without the work of judges and lawyers in family matters, labour law disputes, punishment of crime, administrative affairs or social security disputes, the area of freedom, security and law as the basis of an open and secure European Unity is not attainable. Therefore, another Scoreboard should focus on all areas of law.

- Translating the ideas and concepts of the Scoreboard into the national legal systems:

The EAJ recognises that the European Union has no competence to harmonize the legal systems of the member states. The organization of the judicial institutions of legal system of the member states is a matter for the member state. Organizing the judiciary has to be left entirely to the member states. However, the European Judicial Scoreboard illustrates the need to establish European principles to safeguard the functioning of national judiciaries. The independence and standing of the judiciaries in the member states cannot be left entirely to the national lawmakers – the last 14 years have shown that they have not always fully addressed their responsibility to promote the effectiveness of their judicial systems.

Those indispensable European principles are:

<u>Quality and Efficiency:</u>

In order to ensure the quality of the judicial system which a European citizen is entitled to expect, each national judicial system needs sufficient resources and dependable financial provision. The annual budget has to ensure remuneration for judges and prosecutors commensurate to their responsibilities and their standing. It has to cover the standard of court buildings, equipment and support staff which can be expected by a modern administration. These standards are not met by most, if not all, member states of the European Union. To safeguard the functioning of the judicial systems throughout Europe, European targets for judicial budgets should be established which the national lawmakers should meet.

Moreover, the judicial system of each member state has to be organized and equipped to guarantee effective access to justice for all citizens. However, improving efficiency should not be equated with just speeding up procedure. In order to assess the efficiency of the work of a court, account has to be taken of the soundness of the court's reasoning, the legal arguments taken into account, the amount of evidence taken, the time being spent hearing the parties and the recognition of basic rights. The EAJ is prepared to support the European Commission in its quest to establish criteria for judicial efficiency and see those criteria implemented in the daily work of the courts.

<u>Independence:</u>

Independence is essential to our conception of the judiciary. Although the Judicial Scoreboard shows a high perception of judicial independence for most of the European countries, the independence of the judicial system is always at risk. Therefore, to guarantee the institutional independence of the judiciary, there should be a European standard for all member states to establish councils for the judiciary. These councils should be given sufficient power to guarantee the functioning and independence of the judiciary. Besides, the personal independence of all judges (and prosecutors) should be guaranteed by an adequate remuneration, continuing training and a system of promotion independent from political or administrative influence

**It is time to focus on the judiciary:**

In 2014, the Stockholm program should be replaced by new roadmap for political targets in the area of freedom, security and justice for the next five years. Access to justice should be put first into this program. It can however only be provided by the judiciaries of the member states. **The EAJ asks the European Council, the European Commission and the European Parliament to put the quality, effectiveness and independence of the judiciary on European and national level into the focus of the next five year program.**



## 2013 Resolution on the reform of the Spanish General Council of the Judiciary- St. Gallen

Association Européenne des Magistrats
*Groupe Régional de l'Union Internationale des Magistrats*

European Association of Judges
*Regional Group of the International Association of Judges*

Palazzo di Giustizia Piazza Cavour 00193 Roma Italia

**RESOLUTION**

The Annual Meeting of European Association of Judges (EAJ) held in St Gallen Switzerland on 24-25 May 2013 ,

Whereas:

1) The draft bill to reform the *Consejo General Del Poder Judicial* (*CGPJ*) delivered by the Spanish government in January 2013 changes the manner of appointment of the 12 judges members of the *CGPJ*, consisting of 20 members in total, all appointed by Parliament;

2) Presently the 12 judge members are elected from 36 names presented to the parliamentary chambers, principally by Spanish judicial associations, according to elections held within those associations (A single judge may present himself as a candidate on the written nomination of 220 judges);

3) According to the new draft bill there are no longer primary elections within the judiciary. Judges would be able to nominate themselves as candidates with the supporting signatures of 25 judges or with the support of one judicial association. Each judge or judicial association can endorse up to 12 candidates;

4) According to the same draft bill, *the position of the 12 judge members of the CGPJ would no longer be on a full time working basis, but sharing their working time with their normal judicial function. There would remain only a Permanent Committee* of four or more members, together with the President, operating on a full time basis;

5) According to Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities adopted on 17 November 2010 (Art. no. 26), Magna Charta of Judges (Fundamental principles) – 2010 (art. no. 13) and Opinion no.10 (2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society (art. no. 15), *the composition of the Council for the Judiciary shall guarantee its independence* from legislative and executive powers *and enable it to carry out its functions effectively*;

6) According to CM/Rec(2010)12 of the Committee of Ministers to member states on judges (arts 25 - 27), Magna Charta of Judges (Fundamental principles) – 2010 (art. no. 13), Conclusion of the IAJ 1st Study Commission adopted in Vienna on November 2003 on the election of members judges of High Council of Justice and Opinion no. 10 (2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society

(arts no. 19, 27 e 28), *the Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers*;

7) According to arts 27 e 28 of *CCJE* Opinion no. 10 (2007), *Judges sitting on the Council for the Judiciary should be elected by their peers following methods guaranteeing the widest representation of the judiciary at all levels*;

8) According to paragraph 34 of the above cited Opinion no.10(2007) of the Consultative Council of European Judges (CCJE) on the Council for the Judiciary in the service of society, *although it is for the states to decide whether the members of the Council for the Judiciary should sit as full-time or part time members, it should be pointed out that full-time attendance means a more effective work and a better safeguard of independence.*

**THE GENERAL ASSEMBLY OF THE EUROPEAN ASSOCIATION OF JUDGES**

**ACCORDINGLY APPROVES THE FOLLOWING RESOLUTION:**

**The contents of the draft law to reform the CGPJ (High Council of Judges), published by the Spanish government in January 2013, contravene normal standards of judicial independence, in so far as they propose a change to the manner of selection of members of the CGPJ and the termination of the existing arrangement whereby judicial members of the council work on a full-time basis, introducing in its place for those members a system of part-time working. These proposals would tent to jeopardize the independence of the judiciary in Spain, in particular with regard to its relations with the executive and legislative branches of government.**





**Association Européenne des Magistrats**
***Groupe Régional de l'Union Internationale des Magistrats***

**European Association of Judges**
***Regional Group of the International Association of Judges***

**The President**

**M. Christophe REGNARD**, Vice-president of the International Association of Judges,
President of the French Association of Judges (USM)
Union Syndicale des Magistrats, 33 rue du Four – 75006 Paris, FRANCE

Phone: +33143542126, Fax: +33143299620,
E-mail: c.regnard@union-syndicale-magistrats.org

Your excellency,

I have the honor to address you on behalf of the European Association of Judges (EAJ), regional group of the International Association of Judges (IAJ).

I was recently informed by the Turkish Association of Judges and Prosecutors (YARSAV), member of IAJ and EAJ, about the difficulties encountered by the Judiciary in Turkey.

You will find attached an appeal from YARSAV to the European authorities, that summarizes the difficulties encountered.

According to its statutes, the presidency committee of EAJ decided to examine in detail the situation in order to take measures to support the Turkish judiciary.

EAJ expresses its concerns about these developments, which seems not in compliance with European standards of an independent and impartial judiciary.

I remain at your disposal for any further information.

Respectfully

Christophe REGNARD
President of EAJ

M. Gianni BUQUICCHIO
President of the Venice commission
DG-I, Conseil de l'Europe
67075 Strasbourg Cedex
France

**International Association of Judges**
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Monsieur le Président,

J'ai l'honneur de m'adresser à vous en ma qualité de président de l'association européenne des magistrats, groupe régional de l'Union internationale des magistrats.

J'ai récemment été saisi par l'association turque des juges et procureurs (Yarsav), membre de l'UIM et de l'AEM, des difficultés rencontrées par la Justice en Turquie.

Vous trouverez ci-joint un appel de YARSAV aux autorités européennes, qui synthétise les difficultés rencontrées.

Au vu de ce document, l'AEM, conformément à ses statuts, a décidé d'examiner en détail cette situation, afin de pouvoir prendre prochainement des mesures de soutien aux magistrats turcs.

Mais je tenais, d'ores et déjà, à vous indiquer que l'AEM est profondément préoccupée par des évolutions qui semblent peu conformes aux standards européens d'une justice indépendante et impartiale.

Je reste à votre disposition pour tout renseignement complémentaire.

Je vous prie de croire, Monsieur le Président, en l'assurance de mon profond respect.

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Je reste à votre disposition pour tout renseignement complémentaire.

Je vous prie de croire, Monsieur le Secrétaire général, en l'assurance de mon profond respect.

Christophe REGNARD
Président de l'AEM

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Mrs Viviane REDING
Vice president "Justice, Fundamental Rights and Citizenship"
European commission
Rue de la Loi / Wetstraat 200
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Président de l'AEM

Mme Vivian REDING
Vice présidente « Justice, droits fondamentaux et citoyenneté »
Commission Européenne
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**Association Européenne des Magistrats**
***Groupe Régional de l'Union Internationale des Magistrats***

**European Association of Judges**
***Regional Group of the International Association of Judges***

**The President**

**M. Christophe REGNARD**, Vice-president of the International Association of Judges,
President of the French Association of Judges (USM)
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Your excellency,

I have the honor to address you on behalf of the European Association of Judges (EAJ), regional group of the International Association of Judges (IAJ).

I was recently informed by the Turkish Association of Judges and Prosecutors (YARSAV), member of IAJ and EAJ, about the difficulties encountered by the Judiciary in Turkey.

You will find attached an appeal from YARSAV to the European authorities, that summarizes the difficulties encountered.

According to its statutes, the presidency committee of EAJ decided to examine in detail the situation in order to take measures to support the Turkish judiciary.

EAJ expresses its concerns about these developments, which seems not in compliance with European standards of an independent and impartial judiciary.

I remain at your disposal for any further information.

Respectfully

Christophe REGNARD
President of EAJ

M. Martin SCHULTZ
President of the European parliament
Rue Wiertz / Wiertzstraat, 60
B-1047 Bruxelles/Brussel,
Belgique/België

**Association Européenne des Magistrats**
***Groupe Régional de l'Union Internationale des Magistrats***

**European Association of Judges**
***Regional Group of the International Association of Judges***

**Le Président**

**M. Christophe REGNARD**, Vice-président de l'Union Internationale des Magistrats,
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Monsieur le Président,

J'ai l'honneur de m'adresser à vous en ma qualité de président de l'association européenne des magistrats, groupe régional de l'Union internationale des magistrats.

J'ai récemment été saisi par l'association turque des juges et procureurs (Yarsav), membre de l'UIM et de l'AEM, des difficultés rencontrées par la Justice en Turquie.

Vous trouverez ci-joint un appel de YARSAV aux autorités européennes, qui synthétise les difficultés rencontrées.

Au vu de ce document, l'AEM, conformément à ses statuts, a décidé d'examiner en détail cette situation, afin de pouvoir prendre prochainement des mesures de soutien aux magistrats turcs.

Mais je tenais, d'ores et déjà, à vous indiquer que l'AEM est profondément préoccupée par des évolutions qui semblent peu conformes aux standards européens d'une justice indépendante et impartiale.

Je reste à votre disposition pour tout renseignement complémentaire.

Je vous prie de croire, Monsieur le Président, en l'assurance de mon profond respect.

Christophe REGNARD
Président de l'AEM

M. Martin SCHULTZ
Président du parlement européen
Rue Wiertz / Wiertzstraat, 60
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**International Association of Judges**
Unione Internationale des Magistrats
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**Association Européenne des Magistrats**
***Groupe Régional de l'Union Internationale des Magistrats***

**European Association of Judges**
***Regional Group of the International Association of Judges***

**The President**

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Your excellency ,

The Greek Association of Judges has brought to the attention of the European Association of Judges (EAJ) at its meeting at Foz do Iguacu, Brazil its concerns at the continuing omission of the Greek authorities to take the necessary steps to give effect to the decision of the Constitutional Court of the Hellenic Republic in its judgement No 88/2013.

The Greek Association advises that by that judgement the Constitutional Court annulled measures which were brought into force in August 2012 and which further reduced the salaries of judges. Moreover, in 2014 the Parliament of the Hellenic Republic approved the restoration, with retroactive effect, of judicial salaries to the levels at which they stood in August 2012 and made provision for that in the budget.

However, despite that judgement and that approval, the executive government has failed to take any steps to restore salaries to 2012 levels and to make the necessary back-payments.

On behalf of the EAJ, I must respectfully convey the concerns of the EAJ that the steps required to give effect to the judgement of the Constitutional Court have not been taken.

The EAJ urges the relevant authorities of the Hellenic Republic to bring into effect with all possible speed the measures necessary to remedy the financial position of the Greek judiciary.

Yours faithfully,

Christophe REGNARD
President of the European Association of Judges

**International Association of Judges**
Unione Internationale des Magistrats
Union International de Magistrados
Internationale Vereinigung der Richter
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## 2014 Resolution on the security of Judges in Ukraine

Association Européenne des Magistrats
*Groupe Régional de l'Union Internationale des Magistrats*

European Association of Judges
*Regional Group of the International Association of Judges*

**RESOLUTION**

**ON THE SECURITY OF JUDGES IN UKRAINE**

1. At its meeting in Limassol on 16-17 May 2014 the EAJ received an account from the delegation of the Association of Judges of Ukraine concerning the occurrence over recent times of a significant number of incidents of
   - assaults on members of the judiciary in which the concerned judge was killed;
   - assaults on judges within and outside the court room, often aimed at directly affecting judicial decision making;
   - the setting of fire to court buildings;
   - the damaging of court buildings and theft of computers and other property from the courts.
2. In addition to both the great concern for the personal safety of Ukrainian judges and the sympathy for the victims of those incidents which members of the EAJ naturally feel and express, the EAJ wishes to stress that the protection of the safety of judges and all others engaged in the administration of justice, as well as the building in which they work, is an essential element in maintaining the functioning of any judicial system intended to provide for effective and independent justice.
3. In this regard, reference is also made to the:
   - Recommendation no. R(94)12 of the Committee of Ministers of the Council of Europe which says: "All necessary measures should be taken to endure the safety of judges, such as ensuring the presence of security guards on court premises or providing police protection for judges who may become or are victims of serious threats";
   - Basic Principles on the Independence of the Judiciary (1985) which state that (para. 11): "The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law".
4. The EAJ therefore deplores the incidents to which the Ukrainian Association has drawn attention and urges the Ukrainian authorities to put in place – as a matter of immediacy – all the measures necessary to ensure the protection of all those engaged in the administration of justice in Ukraine from acts of violence and vandalism.

Limassol, Cyprus, 17 May 2014



## 2014 Resolution on the election of the Turkish High Council of Judges and Prosecutors (Cyprus)

Association Européenne des Magistrats
*Groupe Régional de l'Union Internationale des Magistrats*

European Association of Judges
*Regional Group of the International Association of Judges*

**RESOLUTION**

**ON THE ELECTION OF THE TURKISH HIGH COUNCIL OF JUDGES AND PROSECUTORS**

1. Whereas on 5 March 2014, having been advised by the Turkish Association of Judges and Prosecutors (YARSAV) of troubling developments concerning the independence of the judiciary and the prosecution system, the effective separation of powers and the rule of law, the President of the EAJ sent a letter to the President of Turkey and various European and international organisations[1] in which the President of the EAJ expressed the EAJ's deep concerns and drew attention to the relevant international standards; and
2. Having been further advised by the Turkish delegation at the meeting of the EAJ in Limassol of the continuing lack of improvement in those concerns; and
3. Having been further advised, in particular, of dangers threatening the forthcoming election to the HCJP; and
4. Being conscious of the need for independence and impartiality in the constitution and functioning of the HCPJ in order that it contributes fully to the independence of the judiciary and the rule of law;

The European Association of Judges, meeting in Limassol on 16 May 2014

a. REMINDS the authority of the Turkish Republic of the following , relevant international standards:
   - Item 27 of Opinion No. 10 of the CCJE [2];
   - Para 1.3 of the European Charter on the Statute of the Judges[3],

[1] Mr. Baudelaire Ndong Ella, President of the Human Rights Council at the United Nations,
- Mrs. Gabriela Knaul, Special Rapporteur on the independence of judges and lawyers (UN)
- Mr. Didier Burkhalter, Chairperson-in-office of the OSCE
- Mr. Herman Van Rompuy, President of the European Council
- Mr. Jose Manuel Barroso, President of the European Commission
- Mrs. Catherine Ashton, High Representative of the European Union for foreign affairs and security policy
- Mrs. Viviane Reding, Vice–President of the European Commission - Justice, fundamental rights and citizenship
- Mr. Stefan Fule, Member of the European Commission - Enlargement
- Mrs. Rias Oomen-Ruijten, Rapporteur for Turkey (European Union)
- Mr. Martin Schultz, President of the European Parliament
- Mr. Thorbjorn Jagland, Secretary General of the Council of Europe
- Mr. Jean Claude Mignon, President of the Parliamentary Assembly of the Council of Europe
- Mr. Nils Muiznieks, High Commissioner for human rights at the Council of Europe
- Mr. Bart Van Lierop, President of the Consultative Council of European Judges
- Mr. Antonio Mura, President of the Consultative Council of European Public Prosecutors
- Mr. Gianni Buquicchio, President of the Venice Commission
- Mr. Dean Spielmann, President of the European Court of Human Rights

[2] "…Without imposing a specific election method, the CCJE considers that judges sitting on the Council for the Judiciary should be elected by their peers following methods guaranteeing the widest representation of the judiciary at all levels."

and

b. CALLS upon those authorities to be wholly neutral, refrain from any step or action, such as imposing any kind of list or names to judges and prosecutors, obscuring their free will, which directly or indirectly may impede proper conduct of the forthcoming election to the HCJP or may adversely affect the fairness and impartiality of those election; and, in particular, to refrain from providing any government support endorsement or financing for particular candidates.
c. STRESSES the importance of respecting the elected members and regarding them as legitimate representatives of the judiciary, whose Powers should be enjoyed without any doubt as to their independency and impartiality.
d. ESTABLISHES a special committee of the EAJ to observe the whole election process and to report immediately any allegations of breach of fair and free competition rules and to take necessary measures if allegations proved to be true.

Limassol, Cyprus, 17 May 2014

[3] "…In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary."





**Association Européenne des Magistrats**
*Groupe Régional de l'Union Internationale des Magistrats*

**European Association of Judges**
*Regional Group of the International Association of Judges*

**RESOLUTION**

on the Constitutional Act of 4 June 2014
Amending and Supplementing the Constitution of the Slovak Republic

1. At its meeting in Brazil, Foz do Iguacu on 13 November 2014 the European Association of Judges (EAJ) considered the request from the Slovak Association of Judges Združenie sudcov Slovenska for an opinion on the Constitutional Act adopted by the National Council of the Slovak Republic on the 4 June 2014.

2. The meeting noted that the effects of the amendments made by the Constitutional Act were summarized by the Consultative Council of European Judges (CCJE) in the comments which it published on 1 July 2014 as:

- In order to become a judge a new criterion is explicitly introduced that (in the wording of the translation provided) "…to meet the conditions on judge competence guaranteeing the office of judge will be performed properly".
- This criterion is enshrined as a constitutional requirement. Further, the precise definition of how this criterion is to be checked as well as the possibility of establishing other criteria is entrusted to the legislator.
- This criterion will apply not only to new appointees but also to all judges who have already been appointed and in the case of existing judges they will have to undergo an examination.
- The constitutional provision stipulates, in mandatory form, that the basis for this examination will be documentation from the state authority that performs the role of safeguarding classified information and, in addition, a statement from the judge who is being examined. The decision will be taken by the Judicial Council. A challenge to this decision is possible. If a final decision proposes the judge's dismissal, the President of the Republic has to "recall" that judge (Article 147 para 1 "shall recall").

3. The EAJ also notes, and for its part wholly endorses and adopts the conclusions expressed by the CCJE, namely:

- The tenure of judges, which is an essential element of their independence is unduly questioned and endangered if, without concrete and reasonable suspicion, examinations of judges can be initiated.
- The lustration of all judges with tenure is not in line with international standards. The Slovak Republic has, for many years, been a state committed to the rule of law and, at the present time there is no post-revolutionary change from a totalitarian regime to a democratic state, which is the situation when, exceptionally, such means may be acceptable.

- As a rule it is inappropriate that material gathered by secret service institutions be used in procedures to decide if judges fulfill the necessary requirements established by clearly laid down laws. Any attempt to use against judges material which is gathered in the usual manner in which secret service institutions do so is likely seriously to infringe the independence of the judiciary. The influence of a secret service, which is part of the executive power of the state, on judges' performance and career will conflict with the principles of separation of powers.

4. The EAJ brings these serious concerns to the attention of the Slovak authorities and urges those authorities to act upon these concerns.



## 2015 Statement from the European Association of Judges (EAJ) on the appointment of Judges for the European Court of Justice

**Association Européenne des Magistrats**

**Groupe régional de l'Union Internationale des magistrats**

**European Association of Judges**
**Regional Group of the International Association of Judges**

Paris, November 9th, 2015

**STATEMENT FROM THE EUROPEAN ASSOCIATION OF JUDGES (EAJ)**

**ON THE APPOINTMENT OF JUDGES FOR THE EUROPEAN COURT OF JUSTICE.**

1. For the European Judges Association, the well-functioning of the European Court of Justice, including the General Court and Specialised Courts, is of upmost importance for the European Union and the European legal system. Based on the Rule of Law, the European Union cannot function without a European Court System, which is furnished with a sufficient number of judges to handle future caseloads with upmost the quality and in an acceptable period of time.

2. The EAJ shares the concerns of the President of the European Court of Justice, expressed in two letters dating from the 4 April 2011 and 13 October 2014, that the present situation is not satisfactory and reform is needed to guaranty the functioning of the European Court system for the future to be.

3. The EAJ wants to emphasise the importance of the forthcoming debate and decision of the European Parliament for the independence of the European Judiciary for the Rule of Law.

4. A significant contribution to the independence of judges are effective procedures to ensure that judges appointed to the Europa Court have appropriate qualifications and experience to perform their job and are independent of the executive of the states who nominate them for membership and will have appropriate security of tenure once appointed.

**I - Nomination of Judges**

1

5. In their Recommendation CM/Rec(2010)12 from November 2010, the Committee of Ministers of the Council of Europe have established aspects on the independence of the judiciary in Europe. One of this criteria is that the selection of judges should be based "*on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate case by applying the law while respecting human dignity (no 44)*".

6. The Magna Charta of the Consultative Council of European Judges (CCJE) from the 17 November 2010 CCJE states in No 5. that "*Decisions on selection, nomination and career shall be based on objective criteria and taken by the body in charge of guaranteeing independence*."

7. To ensure judicial independence, the Magna Charta further underlines in No 13, *"each State shall create a Council for the Judiciary or another specific body, itself independent from legislative and executive powers, endowed with broad competences for all questions concerning their status as well as the organisation, the functioning and the image of judicial institutions. The Council shall be composed either of judges exclusively or of a substantial majority of judges elected by their peers. The Council for the Judiciary shall be accountable for its activities and decisions*."

8. The procedure for nomination of a judge for the ECJ does not these recommendations in most member states. Although the EAJ recognises the importance of the panel established under art 255 TEUV as a safeguard against the appointment of inappropriate candidates, it is no guarantee to ensure that member states propose the best qualified candidates available in their jurisdiction. The process of nomination under the TEUV allows member states to propose candidates for judicial office to be chosen by the executive for reasons other than their suitability as judges.

9. The EAJ therefore proposes that the Protocol of the Statute of the Court be amended to reflect that only candidates approved as suitable for appointment by national bodies independent of the executive should be considered for appointment. Such bodies may be the national council for the judiciary or a body such as a judicial appointments commission.

10. Further for similar reasons an extension of tenure of judges ought to be decided by a body independent of the Council.. This could be the national council of the judge concerned.

11. Looking at the casework of the European Court of Justice, the EAJ must notice that an increasing number of preliminary rulings by the ECJ are at the centre of private, commercial and criminal law. The ECJ has become, due to wide range harmonisation in the area of consumer law, company law, intellectual property law, international private law and substantial and procedural criminal law, the final judicial body to rule on important questions in these areas.



12. Taking this into account, judges of the European court have to have an in-depth practical knowledge of the private and criminal law from the legal systems they represent. However, under art 253 sect. 1 TEUV, judges shall be chosen "from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are juris consults of recognised competence". This guaranties a selection of lawyers being appointed as judges who are of high competence and personal standing, but does not necessarily ensure that nominees will have the necessary experience of the areas of law in which they have to work.

13. Following the recommendations of the Committee of Ministers of the Council of Europe and the CCJE, the EAJ asks to establish in the Protocol on the Statute of the Court of Justice of the European Union a system to ensure that the qualifications, skills and capacities of the judges of the ECJ are fit to rule on difficult cases of private, commercial and criminal law. It should be stated that the member states should guarantee that a sufficient number of lawyers with practical background from these legal areas being appointed. These lawyers can be national judges, advocates with high standing or academics with true practical experience.

**II - Tenure for Judges**

14. The time of office for any judge of the European Court of Justice is fixed to a period of six years, art 253 sect 1 TEUV.

15. Following Recommendation 12(2010) from the Committee of Ministers and Opinion no 5 of CCJE on the law and practice of judicial appointments to the European court of human rights from 27 November 2003, the EAJ is critical of the short period of judicial office held by the judges on the European Court of Justice and the existing mechanism for extension of such tenure.

16. However, the EAJ would propose that judicial independence can be maintained alongside a fixed period term of office in the CJEU if it is understood that appointment of a lawyer who is not already a judge to the ECJ makes that person a judge of the national legal system and national judges who are appointed continue to keep their status as a judge during the period of tenure in Europe. This would mean that in either case on the ending of tenure at the ECJ the judge returns to the national judiciary until compulsory retirement age or whatever other mechanism for terminating the appointment there may be consistent with the principle of judicial independence.

**2015 Statement from the European Association of Judges (EAJ): the assises de la justice- what has come out of it**

**Association Européenne des Magistrats**

**Groupe régional de l'Union Internationale des magistrats**

**European Association of Judges**
**Regional Group of the International Association of Judges**

Paris, November 9th, 2015

**STATEMENT FROM THE EUROPEAN ASSOCIATION OF JUDGES (EAJ)**

**THE ASSISES DE LA JUSTICE- WHAT HAS COME OUT OF IT**

1. Two years ago, the European Commission organized the "*Assises de la Justice*", aimed at "*Shaping Justice policies in Europe for the years to come*". It received an important number of contributions by eminent lawyers and organizations from the European legal world. The European Association of Judges (EAJ) participated with a written contribution on the independence and effectiveness of the judiciary, asking the Commission to identify more clearly circumstances in which the Rule of Law might be endangered. The President of the EAJ took the floor at the debate to support these submissions.

2. At the end of the day, the then Vice-President and Commissioner for Justice Vivian Reding summed up with what we do in the coming years in this policy area and how we do it needs to be discussed in the open, in a healthy debate involving people, institutions and groups that can be held accountable… I see a future Justice Commissioner – an EU Minister for Justice – taking the helm at central level, giving EU justice policy a face and, of course, held accountable to the European Parliament".

- **General remarks on the Future of the Judiciary**

3. Two years later, the EAJ turns back to the European Commission to ask what it has done to fulfil these promises.

4. Looking at the formal position of an EU Minister of Justice, the portfolio of the acting Commissioner Věra Jourová has been enlarged with the competences for consumers and gender equality. These might be important subjects, but it shows that





the promised focus by the Commission on Justice has gone.

5. The public debate about the future of the European legal system has not been started yet. The question, how much harmonisation of civil, criminal and procedural law is being needed to guarantee the effectiveness of the European legal system as a whole, how to improve mutual recognition without infringing the rights of the citizens and endanger the qualities of the national legal systems are still being handled on a very small scale in the day to day law making process. The promised debate about what will be necessary to give the European legal system a future and ensure the functioning of the judiciary as the safeguard of the Rule of Law and the protection the rights for all citizens has to take place yet. The EAJ asks the Commission to start this debate as promised in November 2013.

6. This debate has to take into account the position of the European Union within the world. In her speech, Vice-President Reding promised to "*address the external dimension of the European area of justice*". At the moment, the independence of the judiciary in Turkey and the personal independence of many Turkish judges, a state closely linked to the European Union by its candidate status and an association treaty, is under very serious threat. The EAJ notes that serious activity by the European Commission to guaranty the Rule of Law in Turkey has not taken place. Confidence in the Commissioner to take appropriate action to promote the Rule of Law within the Union is diminished if she closes her eyes towards serious infringements of these Rule just outside our borders.

- **Justice Scoreboard.**

7. The most noticeable outcome of the "*Assises de la Justice*" was the final establishment of the Judicial Scoreboard. At the "*Assises de la Justice*", Joshua Rozenberg, a British legal journalist, stated that "*If I had to sum up what I hope the EU justice scoreboard will achieve, it would be to measure and improve respect for the rule of law.*"

8. Looking at the figures in the Justice Scoreboards 2013 to 2015, not much has changed in the member states. The time needed to resolve civil and commercial cases (Figure 5; Scoreboard 2015) has gone down noticeably in some member states, but gone up in others. The clearance rate, which indicates the ability of legal systems to reduce the backload of cases, shows that the courts in most member states have to struggle to cope with the volume of incoming cases (Figure 8). However, the number of pending cases is still dramatically different between the member states and shows, that the resources of the courts in most member states are still insufficient (Figure 11).

9. This is underlined by the statistics on government expenditure on law courts, which is in nearly all member states below 0, 5% of the national GDP (Figure 41). Although

the 2013 Scoreboard has shown for a majority of member states deficits in the ability of the court system to handle the volume of cases, none of the member states has risen its expenditure on law courts. In many states funding for legal representation has been reduced.

10. This is a dramatic statement of the 2015 Scoreboard, which has gone mostly unrecognized in member states.

11. The 2015 Scoreboard has come with a new set of data, aimed at the statistical measure of the quality of judgement and the independence of justice.
12. Although the EAJ welcomes very much the effort of the European Commission to implement a programme that improves the quality of the judicial system, it seems doubtful that this will be possible if the criteria for evaluation do not realistic assess the quality of judicial work. Here, the EAJ asks the European Commission to take advice from practising lawyers, judges and advocates, and to take their observations into account how to improve these datas.

13. On the independence of the judiciary, the most striking fact is that in most member states the financial resources allocated to the judiciary are still being defined by the executive, mostly based on historic costs (Figure 50). Some member states still don't have a Council for the Judiciary, for those who do have the powers vary wildly (Figures 48, 49).

14. These figures show that in reality the safeguard of Rule of Law, guaranteed by an independent and sufficient supplied judiciary, is substantially controlled by the executive in allocating resources to legal representation and the court budget that influences the work that judges are able to do. This is not a very encouraging state of affairs ing and should be questioned on a European level.

15. The EAJ still sees the Judicial Scoreboard as providing valuable datas on the situation of the civil, commercial and administrative courts within the Union. It has some doubts if the number of pending cases and time needed to resolve these cases are really the best way to show the effectiveness of a judicial system. However, these datas highlight that the court systems in nearly all member states are short of resources and therefore not as effective as they should be.

16. It is up to the member states to change this situation. Effectiveness of a judicial system however cannot be improved by cutting down procedural rights and safeguards of the litigants, introducing electronic access to courts in all circumstances, reducing gathering of necessary evidence or promoting ADR as a way to avoid state court procedure. Effectiveness can only be promoted by a sufficient number of judges and support staff, judicial training and, if necessary, procedural reform.
17. The EAJ recognizes the missing competence of the European Union in this area. However, if the Justice Scoreboard is going to be of value for the citizens to improve



their access to justice and the quality of the decisions they can get, the European Commission has to ask member states more vigorously then previously what they are doing to improve the effectiveness of their national judicial system. Without this strong request by the European Commission to member states, EU justice policy will stay a patchwork of legal instruments.

18. For the EAJ, it is time for a follow – up of the "*Assises de la Justice*" to start a European debate about the role of the judiciary within the Union and the way to guarantee its position as the safeguard of rights for the citizens.

## 2015 EAJ Resolution on Turkey

**Association Européenne des Magistrats**
***Groupe Régional de l'Union Internationale des Magistrats***

**European Association of Judges**
***Regional Group of the International Association of Judges***

**RESOLUTION**
**ON THE SITUATION OF THE JUDICIARY IN TURKEY**

At its meeting in Gdansk on May 16th, 2015, the European Association of Judges (EAJ) considered the arrest and detention of two judges, namely Metin Özcelik and Mustafa Basar on April 30th in Istanbul, Turkey.

The arrest and detention proceeded on the purported ground that the judges had ordered the release of an alleged suspect.

Any attempt to undermine the freedom of a judge to establish facts and apply the law in a particular case constitutes a clear breach of principle of judicial independence.

EAJ condemns the arrest and detention of any judge on the basis of a decision taken in the exercise of the judge's judicial functions and calls for the immediate release of the judges Metin Özcelik and Mustafa Baser.

Gdansk, May 16th, 2015



## 2015 Statement from the European Association of Judges (EAJ on the proposal from the European Commission on a new investment court system

**Association Européenne des Magistrats**

**Groupe régional de l'Union Internationale des magistrats**

**European Association of Judges**
**Regional Group of the International Association of Judges**

Paris, November 9th, 2015

**STATEMENT FROM THE EUROPEAN ASSOCIATION OF JUDGES (EAJ)**

**ON THE PROPOSAL FROM THE EUROPEAN COMMISSION**
**ON A NEW INVESTMENT COURT SYSTEM.**

The proposal of "*new Investment Court System*", as announced by the European Commission on September 16th 2015 is regarded by the European Association of Judges (EAJ) with serious reservations. The EAJ asks the European Parliament and the Council to scrutinize the proposal very carefully questions weather European Union really needs a completely new Court system to deal with the rights of investors and if so weather the prosed "*new, modernised system of investment courts*" (Commissioner Malmström) really is the best system we can get.

Following Section 3 of the Transatlantic Trade and Investment Partnership (TIPP) on the "Resolution of Investment Disputes and Investment Court System (short:"ICS)" of the Commission draft text from 16.09.2015 (tradoc_153807), the European Commission tries to introduce an elaborate system of amicable dispute resolutions for claims of an investor against a party (e.g. member state of the treaty) for alleged breach of investor's rights. These include all kinds of assets like shares, stocks and other forms of equity, participation in an enterprise, intellectual property rights, movable property or claims to money (section 3, definitions x2), owned or controlled by the by investors of one Party in the territory of the other Party (section 3, definitions x1). The protection of the investor is therefore covered by a wide range of private, criminal, administrative and tax law of the other party. The ICS should get competence in all these areas of national law of the parties.

All member states of the European Union are, by definition and in reality, democratic states under the Rule of Law with well-functioning judiciaries that has competence according to national law.

- **Competence to establish the ICS.**

Legal competence is needed to introduce a new court into this well-established judicial system within the European Union and its member states. The EAJ is in doubt that such a competence does exist.
In its opinion 1/09 of March 8th 2011 on the then draft text on a European and Community Patents Court, the European Court of Justice rejected the competence of the European Union to establish a new Court system outside the existing European one.

The basis of its opinion was the fact, that "*the judicial system of the European Union is moreover a complete system of legal remedies and procedures designed to ensure review of the legality of acts of the institutions*" (sect 70), in which the planned patent court must be regarded as "*outside the institutional and judicial framework of the European Union. It is not part of the judicial system provided for in Article 19(1) TEU. The PC is an organisation with a distinct legal personality under international law.*" (sect. 71). Therefore, the ECJ saw the PC outside the European Court system. "*It is clear that if a decision of the PC were to be in breach of European Union law, that decision could not be the subject of infringement proceedings nor could it give rise to any financial liability on the part of one or more Member States.*" (sect 88).

Therefore, the ECJ held that "*the envisaged agreement, by conferring on an international court which is outside the institutional and judicial framework of the European Union an exclusive jurisdiction to hear a significant number of actions brought by individuals in the field of the Community patent and to interpret and apply European Union law in that field, would deprive courts of Member States of their powers in relation to the interpretation and application of European Union law and the Court of its powers to reply, by preliminary ruling, to questions referred by those courts and, consequently, would alter the essential character of the powers which the Treaties confer on the institutions of the European Union and on the Member States and which are indispensable to the preservation of the very nature of European Union law*" (sect 89).

The competence for the European Union to establish a Court system outside its existing one is therefore very limited. Besides, it has to be questioned very carefully if the national legal systems and the transfer by them of competences by them to the European Union includes the transfer of the competence to establish an International Court system with exclusive competence. Thus if the investor submits a claim to the ICS, art 6 par.1 against a member state with no recourse to a supreme national court, a constitutional court of a member state or the ECJ.

The EAJ does not see the necessity for such a court system. The judicial system of the European Union and its member states is well established and able to cope with claims of an investor in an effective, independent and fair way. The European Commission should promote the national systems for investor's claims instead of trying to impose on the Union and the member states a jurisdiction not bound outside the decisions both of the ECJ and the supreme courts of the member states.

- **Independence of Judges of the ICS.**





For the Tribunal of first Instance, fifteen judges will be elected for a term of six years by a "committee" from jurists with being qualified in their respective countries for appointment to judicial office or of recognised competence. They shall have demonstrated expertise in public international law with expertise in international investment law, international trade law and the resolution of disputes arising under international investment or international trade agreements (art 9 ). The judges shall be paid a retainer fee of around 2.000.-€ a month, other fees and expenditure, which might be transferred by the Committee into a regular salary (art 9, sect 12-15).

The six judges for Court of Appeal shall be qualified for the highest judicial office in their member state or jurist of recognised competence and will be elected by the committee for six years. Their retainer fee shall be around 7.000.- € a month (sect 10).

Judges both of the Tribunal and of the Appeal Tribunal shall be chosen people whose independence is beyond doubt. They shall be independent from government, and not take instructions from government or organisation with regard to matters related to the dispute. (sect. 11).
These provisions for the election, time of office and remuneration for the judges of the ICS do not meet the minimum standards for judicial office as laid down in the European Magna Carta of Judges or other relevant international texts on the independence of judges.

The Magna Carta points out, that the independence of judges shall be statutory, functional and financial (sect 3). Decisions on selection, nomination and career shall be based on objective criteria and taken by the body in charge of guaranteeing independence (sect 5).

Neither the appointment, nor the term of office nor the retainer fee meet with this requirements. The committee which is to appoint the judges has not been shaped. However, it is impossible for such a committee to have an oversight on the judges and jurists in all member states of the treaty which might be qualified to be appointed. The treaty keeps quiet about who is going to present suitable candidates to the committee, and or the procedure to be applied. The committee therefore might be a last safeguard against unsuitable appointments, but is no guarantee for an independent appointment in line with sect. 3 of the Magna Carta.

Besides, the proposed text asks for experience in international investment law. However, most of the disputes might arise on matters of national or European law from all scopes of material law and will not have much to do with "investment law". Therefore, it is doubtful if the criteria for selecting the judges for the ICs are chosen well.

The term of office of six years is much too short to guarantee the independence of the judges appointed.

As the judges do not have to expect a proper salary, their financial independence is in danger. Judges should be appointed by the relevant national mechanisms and have security of tenure.

- **Conclusion**

The European Union and its member states have a well-functioning judicial system which is capable of protecting the rights of an investor in all areas of law. It should be central to an international treaty on trade and investment, to apply this system to investors as the central body to safeguards its rights.
Systems outside this judicial system, either on a basis of arbitration or as a new established International Investment Court System do have to prove that arbitrator or judges in these systems are selected, organized, remunerated and have a term of office which guaranties their personal independence and the independence of the system according to European and international standards. The EAJ is not satisfied that the proposed ICS do meet with this criteria.

For the recognition and execution of decisions of the ICS – even more for those under a tribunal system- it is essential under European Union Law, that at least a final appeal can be made either to the ECJ or one of the national supreme or constitutional Courts, depending on the question of law. The necessity to guarantee the interpretation and application of European Union law and not harmonized national law to the ECJ or a supreme court cannot be given away by an international treaty. This would alter, as the ECJ puts it on its opinion 1/09, the very nature of the European Union Law and might infringe national constitutional law.







**Association Européenne des Magistrats**
***Groupe Régional de l'Union Internationale des Magistrats***

**European Association of Judges**
***Regional Group of the International Association of Judges***

RESOLUTION
ON THE LAW ON LUSTRATION IN UKRAINE

At its meeting in Gdansk on 15 May 2015 the European Association of Judges considered with concern the legislation in Ukraine concerning lustration and its application to judges in Ukraine.

The EAJ notes the views expressed by Venice Commission in its interim report and in particularly its main conclusion at para 104:

*a) Applying lustration measures to the period of the Soviet communist rule so many years after the end of that regime and the enactment of a democratic constitution in Ukraine requires cogent reasons justifying the specific threat for democracy which former communists pose nowadays; the Commission finds it difficult to justify such late lustration.*

*b) Applying lustration measures in respect of the recent period during which Mr Yanukovych was President of Ukraine would ultimately amount to questioning the actual functioning of the constitutional and legal framework of Ukraine as a democratic state governed by the rule of law.*

*c) The Lustration law presents several serious shortcomings and would require reconsideration at least in respect of the following:*

- *Lustration must concern only positions which may genuinely pose a significant danger to human rights or democracy; the list of positions to be lustrated should be reconsidered.*
- *Guilt must be proven in each individual case, and cannot be presumed on the basis of the mere belonging to a category of public offices; the criteria for lustration should be reconsidered.*
- *Responsibility for carrying out the lustration process should be removed from the Ministry of Justice and should be entrusted to a specifically created independent commission, with the active involvement of the civil society.*
- *The lustration procedure should respect the guarantees of a fair trial (right to counsel, equality of arms, right to be heard in person); court proceedings should suspend the administrative decision on lustration until the final judgment; the Lustration law should specifically provide for these guarantees.*
- *The lustration of judges should be regulated in one piece of legislation and not in overlapping ones, and should only be carried out with full respect of the constitutional provisions guaranteeing their independence, and only the High Council of Justice should be responsible for any dismissal of a judge.*
- *Information on the persons subject to lustration measures should only be made public after a final judgment by a court.*

The EAJ notes and endorses those conclusions in particular as they apply to the judiciary. The independence of judiciary requires that particular caution and restraint be applied when any question of lustration of judges is proposed.

In emphasis of the above, the EAJ stresses that treating the holding of judicial office during a given period as in itself a ground for lustration is objectionable; the increasing lapse of time since that period ended also increases the strength of that objection.

The EAJ is further concerned that the transitional provisions of law on the Judiciary and the Status of Judges (art 6) are being used as a means of disguised lustration. Any procedure for evaluation of judicial

performance should not be used as a means of lustration. In particular, the EAJ considers the provision in that law (art 85) for subjecting all judges in the Ukraine to a system of tests and examinations is incompatible with any accepted European or international recognized procedure of evaluation.

Gdansk, May 16th, 2015





**Association Européenne des Magistrats**
***Groupe Régional de l'Union Internationale des Magistrats***

**European Association of Judges**
***Regional Group of the International Association of Judges***

**Le Président**

**M. Christophe REGNARD**,
Judge at the Court of Appeal of Paris
First Vice-president of the International Association of Judges

E-mail: christophe.regnard@justice.fr

Paris, 25th July 2016

To

Mr Thorbjørn Jagland, general secretary of the Council of Europe
Marina Kaljurand, Chair of the Committee of Ministers and Minister for Foreign Affairs of Estonia
Pedro Agramunt, President of the Parliamentary assembly of the Council of Europe
Martin Schulz, President of the European Parliament
Donald Tusk, President of the European Council
Jean-Claude Juncker, President of the European Commission
Frans Timmermans, European commissioner in charge of better Regulation, Interinstitutional Relations, the Rule of Law and the Charter of Fundamental Rights
Věra Jourová, European commissioner in charge of Justice, Consumers and Gender Equality
Federica Mogherini, High Representative of the Union for Foreign Affairs and Security Policy / Vice-President of the Commission
Johannes Hahn, European commissioner in charge of European Neighbourhood Policy & Enlargement Negotiations

Honorable President,

The European Association of Judges would like to express its deep concerns as to the recent attempt of a coup d'état and its consequences in Turkey. There is an urgent need to protect the endangered fundamental human rights in the country.

The European Association of Judges, regional group of the International Association of Judges (IAJ/UIM), is the most important association of judges and prosecutors in Europe, as it encompasses currently 44 national member associations of all Europe. It is a non-political organization. The main aim is to safeguard the independence of the judiciary (judges and

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prosecutors) which is an essential requirement of the judicial function, guaranteeing human rights and freedom.

The only independent association of judges and prosecutors in Turkey, YARSAV, is a member of the EAJ and IAJ. Almost all leading members and many ordinary members of YARSAV have been arrested and suspended in their function as judges and prosecutors in the aftermath of the failed coup d'état in a massive purge made by the executive within the judiciary (as well as in other professional branches, such as teachers, professors). All judges/prosecutors who are on so called "lists of suspicion" shall be dismissed without any disciplinary investigation. On Saturday, 23rd July, the EAJ got the information that YARSAV "*is closed down as of today according to the list annexed to the emergency law. There is no YARSAV anymore*".

For several years the EAJ is very much concerned about the constant degradation of the situation of the Turkish judiciary, especially by the massive violation of the European standards of an independent and impartial judiciary.

Since the end of 2013, when corruption procedures were launched against relatives and people close to the then prime minister ERDOGAN, the Turkish executive did not desist from infringing upon the independence of the judiciary as the following examples may show:

The last elections to the High Council of Judges and Prosecutors (HCJP) in Ankara, to which the EAJ sent an observer mission, simply proved to be false. Turkish government created a judges' association and funded it well so as it could campaign for the HCJP. Meeting rooms and buses to bring people there were put at disposition to this association for free, judges were "invited" to take part in those meetings. It was offered together with information such as personal E-mail domains, SMS addresses and telephone numbers. Promises were made to raise the salaries of judges, to stop disciplinary actions against some of them if the new association gained the elections. Finally, the existing rule of casting the votes was changed instead of the courts of appeal which cast the votes up to then it was now each tribunal at all levels which had to cast the votes. This allowed government to identify those judges and prosecutors who didn't vote for the government supported candidates for the HCJP. Moreover, the other judges' associations such as YARSAV could not make any election campaign. Their candidates and the leading members of the association were kept at their courts and all the planned meetings of the association were forbidden. The result of the elections met with the expectation of government. A majority of HCJP members close to Government were elected. Today the HCJP is one of the government tools to make the actual purge! Five members of the HCJP who were not elected on the list of the government supported candidates, have been dismissed just now.

Since 2014 the infringements on the independence of the judiciary have remarkably increased: violation of the principle of immovability of judges (thousands of judges/prosecutors have been removed from office and transferred to other places often dangerous ones, e.g. near the Syrian border; all this without consent of the respective judges).

Countless disciplinary procedures have been launched against judges/prosecutors, the basis of which is more than doubtful.

Criminal proceedings against judges/prosecutors have been opened and judges and prosecutors were arrested for being a member of an armed terroristic group without any real proof.

The president of YARSAV was forced to finish his function at the Constitutional Court.

Prohibition order to the Turkish delegate to take part at the annual congress of the EAJ in Jerusalem in 2016.

The EAJ did regularly inform the European authorities about these events in Turkey. All the authorities did show their interest in getting informed and did also inform the EAJ.

The EAJ has also learnt for several weeks that the HCJP had made a list of names of judges/prosecutors who should get dismissed from office because they had engaged in safeguarding independence. Many members of YARSAV are on that list.

The use of the failed coup d'état by president ERDOGAN of last week in order to purge the judiciary (and other public institutions /bodies) from all of those who fight for safeguarding democracy in Turkey appears, in the context mentioned above, obvious.

Since last week, the EAJ has received many deeply moved witnesses from Turkish colleagues who ask for help. According to our knowledge judges/prosecutors have been arrested at home without consideration of their families. In detention they have no possibility to meet a lawyer nor are they informed on what cause they are arrested. Only one reason is brought forth: you are arrested because your name is on the list made by the HCJP.

The EAJ and the IAJ are alerted. Many national associations in Europe and in the whole world are informing their respective governments and try to make them sensitive on this issue. You will find the respective "Declarations, open letters, appeals etc. on the IAJ internet site: http://www.iaj-uim.org/fr/home

Today, only the international mobilization can save the Turkish judges and prosecutors and - in a larger perspective - democracy in this country.

**EAJ and IAJ strongly ask you to put all your efforts to stop these developments and try to bring the respective Turkish authorities to restore democracy and the rule of law in their country.**

**One means we invite you to consider is a suspension for the time being of all European and International Programs for cooperation in the field of judiciary.**

In this way Europe could express its commitment to these values and increase pressure on the Turkish government to come back to a state of democracy, human rights and the rule of law.

Yours,
Sincerely

Christophe REGNARD
President of the European Association of Judges

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## 2017 Resolution on Greece

Association Européenne des Magistrats
Groupe Régional de l'Union Internationale des Magistrats

European Association of Judges
Regional Group of the International Association of Judges

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### Resolution on Greece

At its meeting in Chisinau on 19 may 2017 the European Association of Judges was informed by the Greek Delegation about criticism regarding the final judgement of the Greek Supreme Court dated 26 January 2017, which rejected the application of the Turkish State for the extradition of eight military officers.

Any attempt to undermine the independence of the Greek judiciary by undue criticism should be avoided and rejected[1].

The EAJ supports the Greek judiciary to firmly remain independent in protecting human rights despite pressures and threats expressed regardless of what source they are coming from.

[1] CoE "Plan of Action on strengthening judicial independence and impartiality" (2016) and "Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities", para 18



## 2017 EAJ Resolution on Bulgaria

Association Européenne des Magistrats
Groupe Régional de l'Union Internationale des Magistrats

European Association of Judges
Regional Group of the International Association of Judges

At its meeting in Santiago de Chile on 12th November 2017 the European Association of Judges considered certain provisions contained in the Bulgarian Bill amending the Judiciary Act which was introduced in the Bulgarian legislature on 4 July 2017 and passed on 27 July 2017, the provisions of which came into force on 15 August 2017. The amendments in question include the introduction of changes to the Judiciary Act which are damaging to the independence of the judiciary in Bulgaria.

First, the legislative amendments which came into force on 15 August 2017 now require any holder of judicial office in Bulgaria to declare the judicial officeholder's membership of any type of organisation or association, including in particular membership of any professional association of judges. As the President of the European Association of Judges emphasised in his letter of 21st June 2017 to the President of the National Assembly of the Republic of Bulgaria, the right of judges and prosecutors to join and participate in a professional association of judges and prosecutors is internationally recognised[1] as being a right inherent to the independence of the judiciary. It is an important support for the independence of any judiciary that its members are free to form, and participate in, a professional association without restrictions, express or implied. The requirement now imposed on judges and prosecutors in Bulgaria to declare to the Bulgarian Supreme Council of the Judiciary, the body exercising power over their appointment and promotion, their membership of any professional association of judges and prosecutors constitutes a serious implied restriction on that right. It is a restriction which cannot have any objective justification, since membership of a professional association of judges and prosecutors can never be seen as an external interest which might require a judge to withdraw from deciding the litigation before the court or which would otherwise conflict with the impartiality of the judge in the particular case. The only evident purpose of the State's requiring judges to declare their membership of their professional association is to inhibit and deter its judiciary from participation in a professional association. That such is the purpose of the requirement on judges to disclose their membership of a professional association, is emphasised by the fact that the media and some politicians in Bulgaria have repeatedly attacked the existence of professional associations of judges in Bulgaria and in particular the Bulgarian Judges Association. The government of the Republic of Bulgaria has offered no criticism of such attacks, which is in dereliction of its duty to defend the institution of the judiciary against public attacks.

Secondly, in its terms as most recently amended on 27th October 2017, article 230 of the Judiciary Act now provides that the Supreme Judicial Council must suspend from office any judge who is accused of any crime "related to" the office of the judge. Further, the Supreme Judicial Council may immediately suspend from office any judge who is accused by the public prosecutor of any criminal offence of whatever nature, irrespective of its gravity or the penalty which might be imposed in the event of conviction. In deciding that the judge in question should be suspended, the Supreme Judicial Council is not able to examine whether the circumstances are sufficiently serious that suspension sought by the criminal prosecutor is proportionate and necessary in the interests of the administration of justice. No provision is made enabling a judge who has been suspended from

[1] See, for example, CCM/Recommendation 2012/12 0f the Council of Europe, art 25; and similar recommendations of the United Nations.

office to challenge the merits of the decision of the Supreme Judicial Council before any court; and, in contrast to the legal position of any other public servant suspended from office by reason of a criminal accusation, a judge suspended from office is prohibited from seeking any review by the Supreme Judicial council of its decision unless at least eighteen months have elapsed. The power held by a prosecutor to initiate criminal proceedings which entail the suspension of office of a judge is capable of undermining the independence of the judiciary unless the legislative regime provides ample safeguards against unjustified suspension. Among other things such safeguards must require that any decision to suspend a judge should be proportionate and necessary. The European Association of Judges considers that, judged by international standards, the Bulgarian provisions in question lack sufficient safeguards for the protection of judicial independence in Bulgaria.

The European Association of Judges therefore calls on the government and the legislature of the Republic of Bulgaria –

(1) Forthwith to take steps to remove from its legislative or regulatory provisions any requirement that judges and prosecutors declare to the Supreme Judicial Council, or any other body, whether judges and prosecutors are members of a professional association; and

(2) Forthwith to take similar steps to ensure (a) that in the event of the initiation of any criminal charge against a judicial office holder, no suspension from office shall take place without the proportionality of the suspension having been duly considered; (b) that provision is made for any decision suspending from office the person concerned to be appealed to a court; and (c) that the suspension be open for review by the suspending authority at any time.



## 2018 EAJ resolution on Poland

**RESOLUTION OF THE EUROPEAN ASSOCIATION OF JUDGES CONCERNING POLAND.**

The European Association of Judges (EAJ) notes and echoes the concerns recently expressed, especially by the judges of the Courts of Appeal in Poznań, in Krakow and in Katowice, concerning the situation of the judiciary in Poland. The EAJ notes that particular concern has been expressed about threats to the independence of the judiciary posed by recent changes to the judicial system promoted by the executive which are designed to impose a level of political control over the judiciary.

The EAJ considers that these measures represent a failure by the Polish executive to respect the principle of the separation of powers in its recent changes to the judicial system, and to show appropriate respect to the judiciary as the third arm of the Polish government.

The EAJ expresses particular concern about the lowering of criteria for the selection of candidates to sit on the Supreme Court, and the failure to ensure that the independence and objectivity of candidates is guaranteed. This leaves open the possibility that the membership of the Supreme Court Disciplinary Chamber may in consequence be susceptible to political influence. That is contrary to the exercise of true judicial independence.

The EAJ is conscious that the Polish Supreme Court has suspended the application of a law forcing the early retirement of older judges and has sent five questions to the CJEU seeking a preliminary ruling concerning whether the retirement law is in compliance with EU law. The EAJ deprecates the fact that questions have been raised in certain quarters in Poland concerning the entitlement of the Polish Supreme Court to take such a step, some going so far as to suggest that the Polish Supreme Court is guilty of criminal action. The EAJ expresses its support for the Polish Supreme Court in this manifest exercise of its judicial independence.

Finally, the EAJ also expresses its solidarity with the wider Polish judiciary in their efforts to resist the dilution of the independence of the Polish judiciary, and their right to self-governance.

**ADOPTED BY THE ASSOCIATION AT ITS MEETING AT MARRAKECH, MORROCCO ON 17th OCTOBER 2018.**

## 2018 EAJ-Resolution on the UN-Basic Principles of judicial independence

Association Européenne des Magistrats
Groupe Régional de l'Union
Internationale des Magistrats

European Association of Judges
Regional Group of the International
Association of Judges

[illegible]

**RESOLUTION**

**on**

**Updating the "Basic Principles on the Independence of the Judiciary" adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26 August to 6 September 1985 and confirmed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985**

The International Association of Judges ("the IAJ") observes first that in 2014 it decided to update its reference text the "Universal Charter of the Judge", which had not been revised since its adoption at the annual meeting of the IAJ in Taiwan in 1999.

Following that decision, a new Charter was adopted unanimously by the IAJ member associations at its annual meeting in Santiago de Chile in November 2017.

The IAJ continues to welcome the adoption by the United Nations in 1985 of the "Basic Principles on the Independence of the Judiciary."

The IAJ considers that these general principles continue to be relevant 33 years after their adoption and stresses the importance of worldwide rules designed to ensure the independence of judges and to enable judges, through the creation of associations, to defend the principles of judicial independence.

Nevertheless, the IAJ believes that some of these principles could usefully be recast and clarified, including:

- the guarantees of irremovability;
- the training of judges;
- and the distribution of cases within the courts.

The IAJ further notes that some topics which are now at the centre of the concerns of judges do not appear in these principles. These include:

• the principles relating to the organization of justice and internal independence of the judiciary;
• the conditions necessary in order that justice may be rendered effectively;
• the guarantees on remuneration and retirement of judges;
• the creation of a bodies responsible for the recruitment, appointment, promotion and discipline of judges which are composed or constituted in a manner such as to secure their independence;
• the clarification of the ethical and deontological requirements placed on judges, in light of increased public debate and expectations.

As a regional association within the wider International Association of Judges, the **European Association of Judges** endorses the foregoing and therefore supports calls for the undertaking of a review to update the terms of the "Basic Principles on the Independence of the Judiciary which was adopted and confirmed in 1985.

The European Association of Judges accordingly urges the United Nations and its members' governments to engage in such a review and, for its part, the European Association of Judges declares its readiness to contribute to the review.

Berlin, May 25th, 2018.

## 2018 Resolution on Turkey

**RESOLUTION**
**ON THE CONTINUING SITUATION OF THE JUDICIARY IN TURKEY**

At its meeting in Berlin on 25 May 2018, the European Association of Judges (the EAJ) considered the current situation of the judiciary (included the body of public prosecutors) in Turkey, in particular the continued detention of substantial numbers of the judiciary and prosecutors and the effect on their family members.

The ongoing detention of judges and prosecutors solely based on the assumption that they might have connection to the organization of Fetullah Gülen, is in violation of Articles 5(3), 5(4), 6(1) and 6(2) of the European Convention on Human Rights, together with Article 100 of the Turkish Criminal Procedure Law.

Similarly, the dismissal of thousands of judges and prosecutors without due process solely based on the assumption that they might have connections to the organization of Fetullah Gülen violates standards agreed upon by the competent body of the Council of Europe. The fact that judges who have been dismissed are able to bring dismissal proceedings does not mean that there is no such violation since it is not right to place the burden upon them of proving their innocence. This is in violation of Articles 49 and 50 of Recommendation CM/Rec (2010) 12.

In the first months after the events in July 2016 there were several occasions when judges were put under disciplinary procedures because they release defendants from detention. Even if this practice has been corrected since, the indications are that judges remain under substantial pressure to decide in favour of the prosecution authorities. Again, this is in violation of Article 6(1) of the European Convention on Human Rights.

Lastly, a substantial number of detained judges and prosecutors were held in solitary confinement for a time after they were first detained and others were detained in overcrowded cells. This is in violation of Article 3 of the European Convention on Human Rights.

**Therefore, EAJ urgently:**

- **Calls on the Turkish authorities to change their approach and to return to procedures which are in accordance with the obligations of Turkey as a signatory State of the European Convention on Human Rights and a member of the Council of Europe.**

- **Calls on the Turkish authorities to re-examine all cases involving judges and prosecutors so as to ensure that they are in accordance with the obligations of Turkey as a signatory State of the European Convention on Human Rights and a member of the Council of Europe.**

- **Calls on the organs of the Council of Europe to require Turkey to fulfill its obligations as signatory State of the European Convention on Human Rights and a member of the Council of Europe.**

**NOTES**

According to Article 3 of the European Convention on Human Rights, no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

According to Articles 5(3) and (4) of the European Convention on Human Rights, everyone arrested or detained in accordance with the provisions of Article 5(1)(c) shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial (Article 5(3)). Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful (Article 5(4)).

According to Article 6(1) of the European Convention on Human Rights, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

According to Article 6(2) of the European Convention on Human Rights, everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Article 100 of the Turkish Criminal Procedure Law contains two conditions for detention: (a) that there is evidence which shows that there is a strong probability that a crime has been committed; and b) that there is a reason which justifies detention such as, for example, an escape risk, a risk of concealment of evidence or a risk as regards witnesses). The only exception is in respect of certain crimes as listed in the third paragraph of Article 100 but, even in relation to such offences, the requirement at a) still needs to be met.

According to Recommendation CM/Rec (2010) 12, security of tenure and irremovability of judges are key elements of the independence of judges. (Article 49). Furthermore, a permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions (Article 50).

## 2018 Resolution on Serbia

**RESOLUTION**
**ON THE SITUATION OF THE JUDICIARY IN SERBIA**

At its meeting in Berlin on 25 May 2018, the European Association of Judges (the EAJ) considered the current situation of the judiciary in Serbia, in particular the proposed amendments to the Constitution of the Republic of Serbia which will affect the organisation of judicial power.

The EAJ noted the Opinion of the Consultative Council of European Judges (the CCJE) issued on 4 May 2018 (CCJE-BU(2018)4) following a request by the Judges' Association of Serbia to assess the compatibility of the proposed amendments with European standards.

The EAJ shares the concerns expressed in this Opinion. Judicial independence and the separation of powers need to be safeguarded in any democratic society governed by the Rule of Law.

The EAJ notes the conclusions set out in paragraph 6 of the CCJE Opinion, as follows:

*"A. The provisions on the dismissal of members of the HJC should provide the members with sufficient guarantees for their independence by stating possible grounds for dismissal (Amendment II, para 4).*
*B. The provision requiring legislation on the method to ensure uniform application of the law should not be included in the Constitution (Amendment V, para 3).*
*C. The way in which the grounds for dismissal of judges are formulated violates the principle of irremovability of judges and is potentially very dangerous to judicial independence. The 'incompetence' as a ground for dismissal of a judge should be deleted. Provisions on other grounds for dismissal should require strong and clear implementing primary legislation, both to set out the specific misconduct that may result in a dismissal, and the procedure to be followed in cases of possible dismissal. The essential elements of this procedure should be included in the Constitution (Amendment VII, 3).*
*D. The HJC should be composed of an odd number of members, the majority of which should be judges. The possibility for judges if they so choose to be represented by a court president should be guaranteed (Amendment XIII).*
*E. The provision on the dissolution of the HJC in the event it does not render a decision should be deleted."*

The EAJ further notes the following provisions of the Universal Charter of the Judge :
"Article 2-2,3: No judge can be assigned to another post or promoted without his/her agreement".
"Article 2-2,4: A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only as the effect of disciplinary proceedings, under respect of the rights of defence and of the principle of contradiction".

**Therefore, the EAJ:**

- **Calls upon the Republic of Serbia to take the necessary steps to address the concerns raised by the CCJE in its Opinion issued on 4 May 2018.**
- **Calls upon the Republic of Serbia, in particular, to make the revisions set out in paragraph 6 of that Opinion.**
- **Calls upon the Republic of Serbia to ensure that the provisions of the Universal Charter set out above are duly observed.**

## 2019 EAJ Resolution on Poland

Association Européenne des Magistrats
*Groupe Régional de l'Union Internationale des Magistrats*

European Association of Judges
*Regional Group of the International Association of Judges*

**RESOLUTION ON POLAND**

1. At its meeting in Copenhagen on 10 May 2019 the - European Association of Judges ("EAJ") considered the provisions of the Act passed by the legislature of the Republic of Poland on 26 April 2019 amending the Act on the National Council of the Judiciary and the Act on the System of Administrative Courts.

2. The EAJ notes with much concern that, the Act of 26 April 2019 removes the right to bring proceedings challenging the appointment of a person to judicial office in the case of appointments to the Supreme Court. This removal from scrutiny of the appointment of persons as members of the Supreme Court constitutes an exception to the legal provisions governing the appointment of judges in Poland. It facilitates the appointment to the Supreme Court on political or other irrelevant grounds of persons lacking the qualifications and attributes which would be required for appointment on merit alone. It thereby threatens the independence of the Supreme Court and in turn the independence of the lower courts. It thus undermines the rule of law.

3. EAJ followed the many recent steps to change the legislation regarding the judiciary in Poland carefully and with great concern, including:

- The reduction of the retirement age for sitting judges
- The change in the way in which judicial members of the National Council of the Judiciary are elected
- The creation of two new chambers of the Supreme Court, with a decisive influence of the executive power on the appointment of its member.
- The regulation of disciplinary powers and their misuse.
- The newly created power to reopen decided cases.

4. The EAJ observes further that the Act of 26 April 2019 was adopted when the conformity with European Union law of earlier alterations to the legal provisions governing the Supreme Court, the National Council of the Judiciary, and the judiciary in the lower courts is being considered by the Court of Justice of the European Union in proceedings pending before it. The EAJ considers that, far from bringing the provisions on the organisation of the judiciary in Poland into line with the requirements of European Union law, the Act of 26 April 2019 constitutes a further departure from those standards.

5. Moreover, in addition to abolishing any right to seek judicial review of appointments to the Supreme Court, the Act of 26 April 2019 also terminates with immediate effect all cases in which that right of challenge by judicial review is currently being exercised. Such interference by the legislature in ongoing judicial proceedings constitutes a serious interference with the independence of the judiciary and is inconsistent with any proper regard for the rule of law.

6. Accordingly, the EAJ

- Deplores the foregoing provisions of the Act of 26 April 2019; and
- Calls upon the executive and legislative authorities of the Republic of Poland to recognise the incompatibility of those provisions with international and European Union standards and take all appropriate measures to remove that incompatibility.

**2019 Resolution of the EAJ on Poland**

RESOLUTION OF THE EUROPEAN ASSOCIATION OF JUDGES

CONCERNING POLAND

At its meeting in Nur Sultan, Kazakhstan, on 15 September 2019 the European Association of Judges – "the EAJ"- adopted the following resolution concerning the situation of the judiciary in Poland:

1. At the outset the EAJ observes that the independence of the judiciary in Poland has been under attack since the end of 2015. During this period legislative and political measures which are aimed at making the judiciary completely dependent on the executive and legislative powers have been adopted by the Polish government. This policy has been carried out by politicising the membership of the National Council of the Judiciary; by giving the Minister of Justice, who is at the same time the principal law officer *Prokurator Generalny,* the exclusive power to dismiss and appoint presidents and vice presidents of all courts in the country; by obliging judges of the Supreme Court to retire prematurely; and by initiating unwarranted disciplinary proceedings against judges in respect of judicial decisions directed to upholding the independence of the judiciary or judgments finding against the government. The Polish government consistently seeks to penalise or silence members of the judiciary whose decisions are adverse to government while rewarding or applauding those members who demonstrate compliance with its wishes.

2. The EAJ has consistently expressed its concern about these matters, for example in its resolutions on Poland of 10th May 2019, 25th May 2018, 17th October 2018 and its open letter of July 2017.

In these documents the EAJ has repeatedly called upon the authorities in the Republic of Poland to take steps to reverse and remedy these infringements of the principles of the rule of law and the independence of the judiciary.

3. The EAJ now records its ever increasing concern that far from responding positively to these resolutions, the authorities in Poland have persisted in taking measures to undermine the fundamental principles of the rule of law and the independence of the judiciary.

4. As part of that persistence the EAJ further notes and deplores the campaign instigated or encouraged by the Ministry of Justice, especially by Deputy Minister Łukasz Piebiak, which seeks to foster public hatred and contempt against those judges who endeavour to defend the rule of law and judicial independence, including among others Judge Prof. Malgorzata Gersdorf, the president of Supreme Court, and Judge Prof. Krystian Markiewicz, the president of the Association of Polish Judges IUSTITIA.

5. The EAJ also notes recent legislation (a) giving to the Minister of Justice the power to appoint prosecutors before judicial disciplinary tribunals and the power to direct the institution of such proceedings and (b) replacing the right of appeal from a disciplinary tribunal to the Supreme Court with a review by a non-independent chamber *Izba Dyscyplinarna.*

6. Additionally and more particularly, the EAJ also notes and expresses its concern about the refusal of the chancellery *Kancelaria Marszalka Sejmu* of the lower house of parliament – *Sejm* - to give effect to the final judgment of the Supreme Administrative Court of 28 June 2019 (I OSK 4282/18) requiring the chancellery to publish the names of judges who nominated and supported the members of the newly created National Council of the Judiciary.

7. The EAJ therefore expresses its strong solidarity with Polish judges in their efforts to resist the dilution of the independence of the Polish judiciary.

8. The EAJ urges the government of the Republic of Poland:

- Immediately to bring to an end disciplinary proceedings brought against any judge based on the judge's decision to request a preliminary ruling from the Court of Justice of the European Union or the judge's delivering a judgment of which the government or its agencies disapprove;
- To review the new system of disciplinary proceedings to ensure they are independent of government and the Minister of Justice;
- To introduce procedures to amend the legislation on the National Council of Judiciary to ensure that its judicial members are elected by the judges and are not nominated by Parliament or the government; and
- Forthwith to undertake all necessary or appropriate steps to restore the independence of the Supreme Court, the Constitutional Tribunal and the Public Prosecutor's Office.

9. The EAJ also calls upon the UN Human Rights Commission, the European Parliament, the Council and Commission of the European Union, and the international community similarly to urge upon the government of the Republic of Poland the need to take the steps and measures mentioned above.





Association Européenne des Magistrats
Groupe Régional de l'Union Internationale des Magistrats

European Association of Judges
Regional Group of the International Association of Judges

Palazzo Gentilini - Piazza Cavour - 00193 Roma - Italia

***Resolution on the Participation of Associations of Judges in Legislation concerning their Profession***

The Rule of Law is one of the common standards on which the European Union is founded (Art. 2 TEU). Therefore, if legal reforms touch upon the core issues of the professional status of judges and prosecutors – such as promotion, evaluation and disciplinary control –, we consider it to be the legal duty of any member state of the European Union formally to involve professional associations of judges and prosecutors in the legislative process. Failure to comply with these basic standards within a legislative process may thus be regarded a breach of the principle of the Rule of Law. This is all the more so as changes in the legal norms on the promotion and evaluation of judges, and even more their disciplinary control, may be a threat to judicial independence.

The EAJ calls upon the Government of the Hellenic Republic to ensure effectively and immediately that the associations of judges and prosecutors in Greece are involved without exception in any legislative process that concerns the judiciary in Greece, especially the professional status of judges and prosecutors.

## 2021 Resolution on Slovakia



Association Européenne des Magistrats
European Association of Judges

**EUROPEAN ASSOCIATION OF JUDGES**
**RESOLUTION**
**adopted on September 2nd 2021**
**concerning legislative changes in Slovakia**

At the request of the Association of Judges of Slovakia (Zdruzenie sudcov Slovenska - ZZS) the European Association of Judges (EAJ) has considered certain aspects of recent changes to the legislation concerning the judiciary and the rule of law brought about by the amendments to the Constitution of the Slovak Republic (Constitutional Act No. 422/2020 Coll.) and Act no. 423/2020 Z.z. (in connection with the reform of the judiciary), which entered into force on 1 January 2021. The EAJ was also informed about the legislative proposal for a new judicial map of the Slovak Republic.

While appreciating that the changes were part of a reform package adopted with a view to improving the standing of the judicial system in the view of the public in Slovakia, the EAJ regrets that the following particular changes give rise to serious concerns:

**(a) Premature removal from office of members of the Judicial Council**

In its amended form, article 141a (5) of the Constitution now provides that the „Chairman, Vice-chairman and members of the Judicial Council of the Slovak Republic may be removed at any time before the expiry of their term of office".

The introduction of such a power is contrary to European standards on the independence of the





judiciary and judicial councils. The necessary independence of members of the council requires that their tenure of office is secure and not subject to arbitrary termination. Only in the case of serious misconduct or neglect of duty may a member be dismissed; and for that situation the law should provide precise grounds, procedure and competences.

Moreover, the EAJ is disturbed to note that paragraph 17 of the explanatory memorandum accompanying publication of the amendments no longer describes the Judicial Council as „the independent constitutional body of the judiciary" but rather as the „autonomous body complementing judicial policy of the Government and Parliament". This formulation, which invites the Judicial Council to be seen as an instrument of executive policy, may lead to a failure to maintain due separation of power between the legislature, the government and the judiciary, in contradiction of international standards.

**(b) Criminal liability of judges in the exercise of judicial functions**

While a judge should not, of course, enjoy immunity from prosecution for any criminal acts committed in the judge's private capacity, it is of cardinal importance to judicial independence that in giving judgment and carrying out other judicial functions a judge should have immunity from civil and criminal liability. The possibility or threat of prosecution carries the dangers of inhibiting the judge from freely exercising his or her functions and may be readily misused to bring improper pressure or influence on a judge.

The EAJ therefore notes with considerable concern that the amended article 148 (4) of the Constitution provides for immunity for „the legal opinion expressed on the decision, *unless a criminal offence has been committed*" [emphasis added]. This implies that the act of giving a judicial decision may constitute a crime and it is of equal or greater concern to the EAJ to learn that with effect from 1 January 2021 the Criminal Code was amended[1] to create, in sec. 326(a), an offence for any judge to issue „an arbitrary decision causing damage to or bestowing a favour on another person". Taken together, these provisions readily render judges in Slovakia open to criminal prosecution, or the threat or fear of prosecution, in respect of their judgments and thus pose serious dangers to the independence of the Slovakian judicial office holders. The concept of

[1] By Act No. 312/2020 on forfeiture of assets and management of seized property and amendments to certain acts.

an arbitrary decision is very wide and ill-defined. In the view of the EAJ, the loose and widely cast provisions brought into force in Slovakia on 1 January 2021 manifestly fail to restrict criminal liability for the professional activity of the judge to the narrow, closely defined limits required to meet the basic standards required by European and other international instruments dealing with this topic.

**(c) Abolition of safeguards on pre-trial detention of judges**

As set out above, it is necessary that judges are protected against undue prosecution since the existence of a potential liability to prosecution may exercise heavy pressure on a judge and influence the judge‘s work. Therefore, the prosecution of judges needs special safeguards. Previously the Slovak Constitution provided that pre-trial detention of judges required the assent of the Constitutional Court. This has now been abolished (new Article 136 (3) of the Constitution). In the member states of the Council of Europe different models exist to prevent an undue impact on the judiciary as a result of detention or similar investigative measures connected with a prosecution. The consent of the Constitutional Court, another Court or in most cases of the Judicial Council is necessary in order to safeguard the independence of the judiciary. The absence of any such safeguard thus weakens the protection of the independence of the judiciary.

**(d) Transfer to another court without consent**

Under clear European standards on the independence of the judiciary a judge may not be transferred to another court without the consent of the judge other than in the exceptional cases of either a disciplinary process against the judge or a change in the structure of the court system. In the latter case it is necessary that the criteria for such a transfer and the procedure are established by law; that there is no impact from outside the judiciary on the decision to transfer; and that the judges affected should in any event not suffer any loss or diminution of remuneration or social benefits. Moreover, any such transfer should be avoided unless there is no alternative.



**(e) New Judicial Map**

EAJ is not in the position to comment on the concrete plans for a new judicial map. However, it should be pointed out that in any event such important reforms of the justice system call for an intense and substantial involvement on the part of the judiciary. Such involvement is in itself part of the European standards. Reforms of that nature should not be implemented hastily but require extensive and close examination. They should increase efficiency and improve the access to justice, and not the opposite. They should not be seen as a means of dismantling corruption networks that have been discovered – such criminals within the judiciary should be eliminated with existing anti-corruption tools.

**Conclusion**

The EAJ regrets that the reforms of the judicial system in Slovakia include these particular features, which are steps backwards in the process of creating conditions which protect the judiciary from undue influence and safeguard its independence. The EAJ also notes that its concerns are largely shared by the Consultative Council of European Judges which examined the Constitutional amendments in draft and issued its assessment on 9 December 2020 in Opinion CCJE-BU(2020)3. The EAJ endorses that Opinion.

EAJ therefore urges the Slovak authorities:

- to take appropriate measures in accordance with European standards, and in the interests of their citizens, to restore all the above mentioned guarantees of the independence of the judiciary; and

- to involve fully the representatives of the judiciary, including the Association of Judges of Slovakia, in ongoing or future reform projects.

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## 2021 EAJ resolution on Poland

Association Européenne des Magistrats
European Association of Judges
Palazzo di Giustizia Piazza Cavour 00193 Roma Italia

EUROPEAN ASSOCIATION of JUDGES

**RESOLUTION**

**adopted on 11 September 2021**

**regarding**

**The Republic of Poland**

The European Association of Judges (EAJ) welcomes the Judgment given by the Court of Justice of the European Union on 15 July 2021 in Case 791/19 *European Commission v Poland* and the Order for interim measures made by that court in Case 204/21R *European Commission v Poland* on 14 July 2021. Both decisions clearly confirm the assessment of the EAJ that the Disciplinary Chamber of the Supreme Court of Poland does not meet the requirements of an independent judicial body; that several provisions of the disciplinary procedure contradict European standards; and that a disciplinary prosecution of a judge for exercising a judge's right to ask the Court of Justice for a preliminary ruling infringes Article 267 TFEU - all of which constitute breaches by Poland of its obligations under the Treaty on European Union (TEU).

However, the EAJ also considers that the last-minute reaction of the Polish government on 16 August 2021 is totally inadequate. The preliminary suspension of the activities of the Disciplinary Chamber by the chair of the court and the vague notice given by the government that the legal provisions will be improved are combined in the same announcement with a reference to a judgment of the Polish Constitutional Court which denies the priority of European Union Law over national law and which in itself is another infringement of the TEU. The Polish government thus clearly shows its reluctance to depart from its course of demolishing the independent judiciary in Poland.

The EAJ therefore welcomes the decision of the European Commission on 7 September 2021 to request the Court of Justice to impose penalties on Poland due to its failure to observe the Court´s decisions and encourages the European Commission to persevere in following this path until Poland has completely implemented the decisions of the Court of Justice.

Further, the EAJ reiterates that there remain in place several other matters damaging to the rule of law, particularly regarding the independence of the judiciary. These include among others the election procedure for the members of the Judicial Council; the arbitrariness of the appointing of judges, especially Supreme Court judges; the appointment of some of the members of the Constitutional Court; and the position and jurisdiction of the Minister of Justice.

As regards the election of the members of the Judicial Council for instance, the concerns of the EAJ include the apparent misuse by the governing party of state institutions, such as the Speaker of the Parliament (Sejm), in order to prevent Polish citizens from learning details of the candidates for the NCJ. Access to public information is guaranteed by art. 61 of the Constitution and, as the Supreme Administrative Court of Poland has pointed out, such access may be restricted only where that is necessary for "the protection of rights specified in legal acts of persons and business entities, protection of public order and safety or an important economic interest of a state" none of which circumstances applies in the case of election to the NJC. Further, since at least one member of the NCJ has not been nominated lawfully, the validity of its decisions is open to question and in other respects the NCJ may not meet European standards

The EAJ therefore urges the European Commission to continue to use all means which the Treaties provide to bring the Polish authorities to abide by relevant European standards and by their obligations owed under the TEU and, in particular, to ensure that the abovementioned decisions of the Court of Justice are respected and that implementation of the measures necessary to give effect to the decisions is not further delayed. Such measures include declaring that the decisions which this unlawful Disciplinary Chamber has issued are null and void.

## 2022 EAJ resolution on Ukraine

**Association Européenne des Magistrats**
***Groupe Régional de l'Union Internationale des Magistrats***

**European Association of Judges**
***Regional Group of the International Association of Judges***

Resolution

At the meeting of the European Association of Judges in Porto on 29th April 2022 the Ukrainian Association informed about the situation in Ukraine and possible commission of war crimes.

The EAJ therefore resolved to support the request of the Ukrainian Association of Judges to the United Nations to establish an investigative team to gather and record evidence of war crimes.



## 2022 EAJ resolution on Poland

**Association Européenne des Magistrats**
***Groupe Régional de l'Union Internationale des Magistrats***

**European Association of Judges**
***Regional Group of the International Association of Judges***

European Association of Judges

Resolution

adopted on 29 April 2022 in Porto

*Considering* that the independence of the judiciary is an indispensable element of the rule of law and democracy;

*Further considering* that the rule of law is an agreed fundamental value common to all member states of the European Union (Art 2 TEU) which provides for no deviating national interpretation;

*And considering* that the primacy of European Law over national law and the binding character of decisions of the Court of Justice of the EU on national courts and institutions is fundamental to the structure of the European Union;

*Stressing* that the procedure under Article 267 TFEU is provided to safeguard the aforementioned objectives;

*Being in no doubt* that the processes for the appointment of judges should be such as to ensure that all necessary requirements for the independence of the judiciary have been observed;

*Noting* with concern that in their current state Polish disciplinary procedures do not guarantee that the independence of judges is not impaired;

*Reaffirming* that the European Association of Judges fully endorses the position of IUSTITIA and is wholly committed to supporting Polish judges in their efforts to re-establish fully the rule of law in Poland in the interest of the Polish society; and

*Deploring* the continuing and unacceptable delay by the authorities of the Republic of Poland to give effect to the obligations incumbent upon them in terms of the judgments of the Court of Justice of the EU of 14 July 2021 in Case C-204/21 *Commission v Poland* and of 15 July 2021 in Case C-791/19 *Commission v Poland*

**The European Association of Judges calls upon the Polish authorities:**

**To take immediate steps to adopt or enact all measures necessary to implement those rulings of the Court of Justice of the EU**

and in particular-

- **to end the operation of the Disciplinary Chamber of the Supreme Court;**
- **to reinstate all judges who have been suspended or transferred on the basis of decisions of that disciplinary chamber;**

- **to repeal recently introduced provisions whereby a judge may be subject to disciplinary proceedings based on the content of a judgment issued by the judge or for questioning the legitimacy of the provisions for the appointment of judges; and**

- **to alter the legal framework for the composition of the National Judicial Council so as to realign it with European standards, whereby the majority of members are judges elected by their peers.**





**The March of a thousand Gowns, Two Years Later**

José Igreja Matos

Hannah Arendt brilliantly explained us that "storytelling reveals meaning without committing the error of defining it."

Therefore, allow me to start with a short story from David Foster Wallace, the genius writer.

"There are these two young fish swimming along and they happen to meet an older fish swimming the other way, who nods at them and says "Good Morning, boys. How's the water?" And the two young fish swim on for a bit, and then eventually one of them looks over at the other and goes "What the hell is water?"

This story represents to me a clear parable about judicial independence.

Judicial independence must be seen as our water; only if judges work independently, we can finally move around, no matter what, serving our fellow citizens.

But, sometimes, critical certainties are often the ones that are hardest to see.

Irrespective of the current tempests, regardless of the troubled waters we are obliged to navigate, the survival of judges depends on the presence of water.

Let's never forget it!

When Europe is finally putting an end to a terrible pandemic that alienate our lives for long months, we are threatened by a war with their inevitable long tail of horror, despair and anguish. Now that the judiciaries were finally rebuilding in a post pandemic era, learning to take the best of digital solutions put forward during the times of confinement, we are confronted with the absolute demand of providing shelter, fulfilling basic needs for survival, to the millions of our Ukrainian brothers and sisters fleeing from death and devastation caused by a ruthless invader.

The Polish people has taught us in recent weeks how generous and compassionate can be mankind; my personal faith in humanity has truly invigorated witnessing how anonymous Polish citizens, with serenity and discretion, came massively to the rescue of their terrified neighbors.

In this particular context of present days, I would like to briefly share with you two conclusions

First:

It is crucial to realize, beyond any doubt, that the solidarity and the demanding efforts from European Union countries to assist Ukraine cannot justify, in any possible way, a retreat or weakening in the decisive struggle for Rule of Law and the independence of the judiciary. Quite

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the opposite. It was the absolute absence of Rule of Law that allowed the Russian invasion; it was the disrespect to basic rules of International Law that put us in this terrible situation.

The absurd idea cherished by the European Commission of throwing an irresponsible "blind eye" to the Rule of Law disaster in Poland or in Hungary casts again an immense shadow on the hope for a peaceful and common future for the European Union.

Secondly:

We must continue to underline the symbolical importance of our March, held on January 11, 2020, now more significant than ever before.

A few days ago I was invited for a seminar by an Australian Colleague; the auditorium will be members of their judiciary assembled on the other side of the world. Asking about the main topic for my intervention immediately he asked with genuine enthusiasm - can you speak about the historical moment for judges of the 1000 Robes March?

To celebrate the Warsaw March today is to remind governments that judicial independence is not a problem; is a solution. It is not negotiable; it is vital.

To comply with the rulings of the European Court of Justice and of the European Court of Human Rights on judicial independence in Poland; to take urgent action and immediately apply the Rule of Law Conditionality Mechanism for Poland and Hungary; these are the new trails of our collective March.

Dear Colleagues and friends:
The road may bend out of sight at times, but we always know what lies ahead.
Let's keep marching!





1. Dear Colleagues, dear friends from" IUSTITIA" dear Speakers and participants.

I am really privileged and honoured to be part of this event, marking second anniversary of "ONE THOUSAND GOWNS MARCH".

2. It is because, this was unique event, after which nothing is the same, manifesting unity of judges in Europe to support independence of justice, rule of law and democracy in Europe.

3. Today two chosen topics are best illustration how rule of law can easily be brought to jeopardy and how sometimes such events are used to deliberately squeeze the principles Europe is brought up.

4. Martin Luther King said:

**"History may not repeat itself but it often rhymes".**

5. Two last years have been like no other in recent memory. While the COVID – 19 pandemic is first and foremost a public health crisis, we must not lose sight of related challenges that are consequential for containing this threat and for promoting a rapid and sustainable recovery.

The struggle to uphold the rule of law is one of them.

6. For example there a risk that some states may utilize emergency powers to consolidate executive authority at the expense of the rule of law, suppressing and undermining democratic institutions, especially where courts and other oversight bodies struggle to perform due to COVID-related restrictions.

7. The distribution of different forms of emergency aid, can be fertile ground for corruption and without effective justice system, where again judges are in the centre of it, that will ensure transparency, accountability and oversight, much of it will not reach intended beneficiaries.

8. From time to time, every nation has an emergency of one kind or another to face. It tests all aspects of that nation -- the people, the facilities, the finances -- and very occasionally it also tests a commitment to the Rule of Law.

9. Let us remember that the Rule of Law is the crucial building block for any society to be stable and prosper. Without the Rule of Law there is no prosperity. Without the Rule of Law a nation's prosperity declines, human rights are abandoned and social order eventually breaks down. It is as inevitable a consequence of the lack of the Rule of Law.

10.Second crisis, aggression on Ukraine, which is unfortunately so similar to experience my Country, Croatia experienced 30 years ago, bring me at the end to revoke descending opinion of justice Lord Atkin in the case: Liversidge v Anderson [1942] AC 206

11. In a speech that should serve as a lesson to us all he said, "…Amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace."

12. The crisis we are facing brought something good. It forced us all to "get out of the box" to find new ways of delivering justice.

13. In this respect, we should remember that crisis passes, and when it does pass, it is crucial that the Rule of Law remains strong in its wake. Society is built on the foundations of the Rule of Law and if, following this crisis, we are still left with a strong commitment to the Rule of Law we will have strong foundations to recover and build prosperity for citizens.

14. At the end I would only like to congratulate organizers for all efforts in organizing this Conference.

*The LexisNexis definition of Rule of Law.*

Ultimately and thankfully for the Rule of Law, Lord Atkin's view, namely that even governments are subject to the review of the law, prevailed and became the approach of much of the global legal world.

We are now living through unprecedented times of a different but no less serious kind. The European Commission is planning to ban all non-essential travel throughout Europe's Schengen free-travel zone. More countries are implementing lockdowns of various kinds and closing their borders to try to limit the spread of Coronavirus. Spain and Italy are isolating whole towns and cities. The United States has banned travel between the European Union and the US.

We are witnessing an unparalleled crisis in public health. There is no clear way to see when the pandemic will end or what further restrictions may become necessary. Further restrictions may become necessary that in normal times would be considered an infringement of civil liberties. Indeed, this blog may be out of date at the moment of publication!

The latest idea suggested by a number of people is that jury trials should be suspended (not abandoned I presume). I am sure other impacts will be felt: access to the justice system will be slowed down, maybe emergency health legislation passed, and who knows yet what more may be needed.

But let us remember the lessons of history: Even in the midst of the most serious of crises there is no need to abandon the Rule of Law. Society is not benefited in the long run by removing the foundations upon which it is built. The taking of extraordinary powers should be a mechanism to bypass bureaucracy not the Rule of Law!

We should remember that in a crisis, the people who are affected most by the abandonment of the Rule of Law are the most vulnerable. Sticking to important principles is not always easy but they are the foundation of civilized society and a crisis should not take away our civilization.

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**Association Européenne des Magistrats**
***Groupe Régional de l'Union Internationale des Magistrats***

**European Association of Judges**
***Regional Group of the International Association of Judges***

Rome, February 22nd 2023

**EUROPEAN ASSOCIATION OF JUDGES' BORD STATEMENT**

**ON RECENT DEVELOPMENTS IN ISRAELI JUDICIAL SYSTEM**

1. The recent legislative activities in Israel aim to interfere seriously in the position of the judiciary - one of the equal and independent branches of government - towards the other two state powers. Those developments are closely followed in the European Association of Judges (EAJ), one of four Regional Groups of International Association of Judges (IAJ), in which the judges in Israel are represented through our valued and respectful member, the Israeli Association of Judges (ILAJ).

2. The reforms to be introduced have the following aims:

- Changing the composition of the judicial selection committee, giving the decisive power in the Committee (majority) to the non-judicial members – who are mainly appointed from the parliamentary majority. The proposals seek to radically change the process for appointing Israel's judges, as a result granting the executive branch full control over the appointment, promotion and removal from office of judges at all levels of the judiciary, including the Supreme Court;

- New requirement of 80% to 100% of Supreme Court judges to strike down a law as unconstitutional;

- Implementing an override clause that would allow the Knesset to overrule the court and move forward with legislation that the Supreme Court has rendered unconstitutional;

- Making Basic Laws immune from judicial review, regardless of their content.

3. EAJ Board wishes to recall the UN Basic principles on Independence of Judiciary where it is explicitly stated:

1. The *independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country.* ***It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary****.*

*2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.*

*3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.*

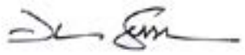
*4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. […]*

*10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory."*

4. We are convinced that judges can properly fulfil their duties and maintain the trust of the public only where the principles of rule of law are fully followed.

**We therefore call on Israeli Authorities not to make a step back in already internationally established guarantees of independence of judiciary, for the sake of its' citizens and for the sake of rule of law in the World.**

EAJ Board



Duro Sessa President of EAJ, First Vice-president of IAJ

Mikael Sjoberg – Vice-president of IAJ

Sabine Matejka - Vice-president of IAJ





PRESS RELEASE

**FOUR EUROPEAN ORGANISATIONS OF JUDGES SUE EU COUNCIL FOR DISREGARDING EU COURT'S JUDGEMENTS ON DECISION TO UNBLOCK FUNDS TO POLAND**

***Europe, August 28th, 2022***

The four main European organisations of judges:

*Association of European Administrative Judges* (AEAJ)

*European Association of Judges* (EAJ, a regional branch of the *International Association of Judges - IAJ*)

*Rechters voor Rechters* (Judges for Judges)

*Magistrats Européens pour la Démocratie et les Libertés* (MEDEL)

represented by Carsten Zatschler SC, Emily Egan McGrath BL, Barristers, assisted by Anne Bateman and Maeve Delargy, Solicitors, of Philip Lee LLP,

**have filed today before the Court of Justice of the European Union (CJEU) a lawsuit against the EU Council over its decision to unblock Recovery and Resilience funds for Poland.**

The lawsuit is an action for annulment pursuant to Article 263 of the Treaty on the Functioning of the European Union (TFEU) against the Council Implementing Decision of 17 June 2022, addressed to the Republic of Poland, adopted under Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021, establishing the Recovery and Resilience Facility.

Each of the four organisations of judges has the mission to defend judicial independence and impartiality of judges everywhere in the EU; three of them have (associations of) judges from Poland as members. They argue as follows:

The EU Council decided to unblock EU funds for Poland once three "milestones" are met: (1) the Disciplinary Chamber of the Supreme Court will have to be disbanded and replaced with an independent court; (2) the disciplinary regime must be reformed; (3) judges who have been affected by the decisions taken by the Disciplinary Chamber will have the right to have their cases reviewed by the new chamber.

The four European organisations of judges argue that these milestones fall short of what is required to ensure effective protection of the independence of judges and the judiciary and disregard the judgments of the CJEU on the matter.

The decision of the EU Council harms the position of the suspended judges in Poland: for example, the CJEU has ruled that the Polish judges affected by unlawful disciplinary procedures should be reinstated at once, without delay or a procedure, while the third milestone would introduce a procedure of more than a year with an uncertain outcome.

This decision also harms the European judiciary as a whole and the position of every single European judge. All judges of every single Member State are also European judges, having to apply EU Law, in a system based on mutual trust. If the judiciary of one or more Member States no longer offers guarantees of independence and respect for the basic principles of the Rule of Law, the entire European judiciary is undeniably affected (so called "spillover effect").

The reason for asking the annulment of the EU Council's decision is to make explicit the principle that judgments of the CJEU on the subject of the independence of judiciaries should be enforced without delay and in full, and that EU Institutions cannot even partly act incoherently with them should be made explicit by this lawsuit. The EU Council decision violates this principle, because there is no full – i.e. unconditional - enforcement of CJEU judgements.

**The goal of the lawsuit is to establish the above-mentioned principle and to prevent a Commission decision to unblock EU funds for Poland until the CJEU judgements are fully and completely enforced.**

The support provided by *The Good Lobby Profs* is gratefully acknowledged.



***The Association of European Administrative Judges (AEAJ)*** *was founded in 2000 as a European-wide apex association of national associations of administrative judges and is open to membership of associations (as well as individual members) of all countries which are member of the Council of Europe. For the time being, it encompasses members of 34 European countries and represents approximately 6000 administrative judges. Among others, its objectives are not only to broaden the knowledge and exchange on matters of joint legal interest among administrative judges in Europe but also to strengthen and promote the professional interests of administrative judges, which includes the defence of judicial independence in all its various aspects.*

*Website: http://www.aeaj.org*

*Contact: Edith Zeller (President) + 43 676 629 1840 / edith.zeller@vgw.wien.gv.at*

*The* ***International Association of Judges*** *was founded in Salzburg (Austria) in 1953. It is a professional, non-political, international organisation, bringing together national associations of judges, not individual judges, approved by the Central Council for admission to the Association. The main aim of the Association is to safeguard the independence of the judiciary, which is an essential requirement of the judicial function, guaranteeing human rights and freedom. The organization currently encompasses 94 such national associations or representative groups, from five Continents. The IAJ has four Regional Groups: the European Association of Judges, the Ibero-American Group, the African Group, the Asian, North American and Oceanian Group. Purpose of the Regional Groups is to discuss local problems concerning the Judiciary. They usually meet twice a year and may pass resolutions either on general issues affecting the Judiciary of the whole concerned area, or specifically regarding one or more given countries. Ad hoc missions and reports can also be organized in particular cases.*

***European Association of Judges*** *is the biggest part of IAJ uniting together 48 judges' associations one from each European State.*

***International Association of Judges (IAJ)***

*Website: https://www.iaj-uim.org*

*Contact: José Igreja Matos (President) +351 916 684 948 / igrejamatos@gmail.com*

***European Association of Judges (EAJ)***

*Contact: Duro Sessa (President) + 38 598 278 216 / duro.sessa@vsrh.hr*

***Rechters voor Rechters (Judges for Judges)*** *was established in 1999 as an independent and non-political foundation set up by judges to support fellow judges abroad who have run into problems or risk problems on account of their professional practice. These problems are mostly related to (presumed) violation of their*

*professional independence. J4J also concerns itself with judges, who have been discharged for disturbing reasons, have been arrested and imprisoned, put under pressure, are threatened or even assassinated.*

*Website: http://www.rechtersvoorrechters.nl*

*Contact: Tamara Trotman (President) / info@rechtersvoorrechters.nl*

***Magistrats Européens pour la Démocratie et les Libertés (MEDEL)**, is an association that was founded in 1985 in Strasbourg, France, and gathers 24 associations of judges and prosecutors, coming from 16 European countries, all members of the Council of Europe, representing a total of around 18.000 magistrates. Its goals are, among others, the establishment of a common debate among magistrates from different Countries to support European community integration, in view of the creation of a European political union, the defense of the independence of the judiciary in the face of every other power as well as of specific interests, the democratization of the judiciary, in its recruitment and in the conditions for the exercise of the profession, in particular in face of the hierarchical organization, and the respect, in all circumstances, of the legal values specific to the democratic state based on the rule of law.*

*Website: http://www.medelnet.org*

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COMMUNIQUÉ DE PRESSE

## QUATRE ORGANISATIONS EUROPÉENNES DE JUGES POURSUIVENT LE CONSEIL DE L'UE POUR AVOIR IGNORÉ LES ARRÊTS DE LA COUR DE JUSTICE DE L'UE DANS LA DÉCISION DE DÉBLOQUER LES FONDS POUR LA POLOGNE

***Europe, 28 août 2022***

Les quatre principales organisations européennes de juges :

*L'Association des Juges Administratifs Européens* (AEAJ)

*L'Association Européennes des Juges* (branche régionale de l'association internationale des juges

*Rechters voor Rechters* (Judges for Judges)

*Magistrats Européens pour la Démocratie et les Libertés* (MEDEL)

représentées par Carsten Zatschler SC, Emily Egan McGrath BL, Barristers, assistés par Anne Bateman et Maeve Delargy, Solicitors, of Philip Lee LLP,

**ont déposé aujourd'hui devant la Cour de Justice de l'Union Européenne (CJUE) un recours contre le Conseil de l'UE concernant sa décision de débloquer les fonds de la Facilité de Reprise et Résilience pour la Pologne.**

L'action est un recours en annulation au titre de l'article 263 du traité sur le fonctionnement de l'Union européenne (TFUE) contre la décision d'exécution du Conseil du 17 juin 2022, adressée à la République de Pologne, adoptée en vertu du règlement (UE) 2021/241 du Parlement européen et du Conseil du 12 février 2021, portant création du mécanisme de redressement et de résilience.

Chacune des quatre organisations de juges a pour mission de défendre l'indépendance et l'impartialité des juges partout dans l'UE ; trois d'entre elles comptent des associations de juges polonais ou des magistrats polonais parmi leurs membres. Le recours est fondé sur les éléments suivants :

Le Conseil de l'UE a décidé de débloquer les fonds européens destinés à la Pologne une fois que trois "étapes" auront été franchies : (1) la chambre disciplinaire de la Cour suprême devra être dissoute et remplacée par un tribunal indépendant ; (2) le régime disciplinaire devra être réformé ; (3) les juges qui ont été affectés par les décisions prises par la chambre disciplinaire auront le droit de faire réexaminer leur cas par la nouvelle chambre.

Les quatre organisations européennes de juges soutiennent que ces conditions sont en deçà de ce qui est nécessaire pour assurer une protection efficace de l'indépendance des juges et du pouvoir judiciaire et qu'ils ne tiennent pas compte des arrêts de la CJUE en la matière.

La décision porte préjudice à la position des juges suspendus en Pologne : par exemple, la CJUE a ordonné que les juges polonais affectés par des procédures disciplinaires illégales soient réintégrés immédiatement, sans délai ni procédure, alors que l'une des étapes introduirait une procédure de plus d'un an à l'issue incertaine.

Cette décision porte également préjudice au système judiciaire européen dans son ensemble et à la position de chaque juge européen. Tous les juges de chaque État membre sont également des juges européens, qui doivent appliquer le droit communautaire, dans un système fondé sur la confiance mutuelle. Si le système judiciaire d'un ou de plusieurs États membres n'offre plus de garanties d'indépendance et de respect des principes fondamentaux de l'État de droit, l'ensemble du système judiciaire européen est indéniablement affecté.

C'est pourquoi nous demandons l'annulation de la décision du Conseil de l'UE, afin que les arrêts de la CJUE relatifs au droit de tout citoyen à un juge indépendant soient exécutés sans délai et dans leur intégralité et que soit rappelé aux institutions européennes le principe suivant lequel elles doivent exécuter de façon inconditionnelle et complète les décisions de la Cour de Luxembourg.

**En réaffirmant ce principe, notre action judiciaire vise à empêcher que la Commission ne débloque les fonds européens destinés à la Pologne tant que les arrêts de la CJUE ne sont pleinement et entièrement exécutés.**

Le soutien apporté par *The Good Lobby Profs* est vivement remercié.



*L'**Association des Juges Administratifs Européens (AEAJ)** a été fondée en 2000 en tant qu'association faîtière européenne des associations nationales de juges administratifs. Elle est ouverte aux associations (ainsi qu'aux membres individuels) de tous les pays membres du Conseil de l'Europe. Pour l'instant, elle regroupe des membres de 34 pays européens et représente environ 6000 juges administratifs. Ses objectifs sont, entre autres, non seulement d'élargir les connaissances et les échanges sur des questions d'intérêt juridique commun entre les juges administratifs en Europe, mais aussi de renforcer et de promouvoir les intérêts professionnels des juges administratifs, ce qui inclut la défense de l'indépendance judiciaire sous tous ses aspects.*

*Site web : http://www.aeaj.org*

*Contact : Edith Zeller (Présidente) + 43 676 629 1840 / edith.zeller@vgw.wien.gv.at*

*L'**Association Internationale des Magistrats** a été fondée à Salzbourg (Autriche) en 1953. Il s'agit d'une organisation professionnelle, apolitique et internationale, regroupant des associations nationales de juges, et non des juges individuels, agréés par le Conseil central pour être admis dans l'Association. L'objectif principal de l'Association est de sauvegarder l'indépendance du pouvoir judiciaire, qui est une condition essentielle de la fonction judiciaire, garantissant les droits de l'homme et la liberté. L'organisation comprend actuellement 94 associations nationales ou groupes représentatifs, issus des cinq continents. L'AIJ compte quatre groupes régionaux : l'Association Européenne des Juges, le groupe ibéro-américain, le groupe africain, le groupe asiatique, nord-américain et océanien. L'objectif des groupes régionaux est de discuter des problèmes locaux concernant le pouvoir judiciaire. Ils se réunissent généralement deux fois par an et peuvent adopter des résolutions soit sur des questions générales concernant le pouvoir judiciaire de l'ensemble de la région concernée, soit sur des questions spécifiques concernant un ou plusieurs pays donnés. Des missions et des rapports ad hoc peuvent également être organisés dans des cas particuliers.*

*L'**Association Européenne des Juges** est la partie la plus importante de l'AIJ. Elle regroupe 48 associations de juges, une pour chaque État européen.*

***Association Internationale des Magistrats (AIJ)***

*Site Internet : https://www.iaj-uim.org*

*Contact : José Igreja Matos (Président) +351 916 684 948 / igrejamatos@gmail.com*

***Association européenne des juges (AEJ)***

*Contact : Duro Sessa (Président) + 38 598 278 216 / duro.sessa@vsrh.hr*

***Rechters voor Rechters (Judges for Judges)** a été créée en 1999. Il s'agit d'une fondation indépendante et apolitique créée par des juges pour soutenir des collègues juges à l'étranger qui ont rencontré des problèmes ou risquent d'en rencontrer en raison de leur pratique professionnelle. Ces problèmes sont principalement liés à la violation (présumée) de leur indépendance professionnelle. J4J s'occupe également des juges qui*

*ont été démis de leurs fonctions pour des raisons inquiétantes, qui ont été arrêtés et emprisonnés, qui subissent des pressions, qui sont menacés ou même assassinés.*

*Site web : http://www.rechtersvoorrechters.nl*

*Contact : Tamara Trotman (Présidente) / info@rechtersvoorrechters.nl*

***Magistrats Européens pour la Démocratie et les Libertés (MEDEL)**, est une association qui a été fondée en 1985 à Strasbourg, France, et regroupe 24 associations de juges et de procureurs, provenant de 16 pays européens, tous membres du Conseil de l'Europe, représentant un total d'environ 18.000 magistrats. Ses objectifs sont, entre autres, l'établissement d'un débat commun entre les magistrats de différents pays pour soutenir l'intégration de la communauté européenne, en vue de la création d'une union politique européenne, la défense de l'indépendance du pouvoir judiciaire face à tout autre pouvoir ainsi qu'à des intérêts particuliers, la démocratisation du pouvoir judiciaire, dans son recrutement et dans les conditions d'exercice de la profession, notamment face à l'organisation hiérarchique, et le respect, en toutes circonstances, des valeurs juridiques propres à l'Etat démocratique fondé sur la primauté du droit.*

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COMUNICATO STAMPA

**QUATTRO ORGANIZZAZIONI EUROPEE DI GIUDICI CITANO IN GIUDIZIO IL CONSIGLIO DELL'UE PER AVER IGNORATO LE SENTENZE DEL TRIBUNALE DELL'UE NELLA DECISIONE DI SBLOCCARE I FONDI ALLA POLONIA**

***Europa, 28 agosto 2022***

Le quattro principali organizzazioni europee di giudici:

*Association of European Administrative Judges* (AEAJ)

*European Association of Judges* (EAJ, un gruppo regionale della *International Association of Judges - IAJ*)

*Rechters voor Rechters* (Judges for Judges)

*Magistrats Européens pour la Democratie et les Libertés* (MEDEL)

rappresentate da Carsten Zatschler SC, Emily Egan McGrath BL, Barristers, assistiti da Anne Bateman e Maeve Delargy, Solicitors, of Philip Lee LLP,

**hanno presentato oggi alla Corte di giustizia dell'Unione europea (CGUE) un ricorso contro il Consiglio dell'UE per la sua decisione di sbloccare i fondi per la ripresa e la resilienza per la Polonia.**

Il ricorso per  annullamento ai sensi dell'articolo 263 del Trattato sul funzionamento dell'Unione Europea (TFUE) riguarda la decisione di esecuzione del Consiglio del 17 giugno 2022, indirizzata alla Repubblica di Polonia, adottata ai sensi del regolamento (UE) 2021/241 del Parlamento europeo e del Consiglio del 12 febbraio 2021, che istituisce lo strumento di ripresa e resilienza.

Ciascuna delle quattro organizzazioni di giudici ha la missione di difendere l'indipendenza e l'imparzialità dei giudici in tutta l'UE; tre di esse hanno come membri (associazioni di) giudici polacchi. Esse sostengono quanto segue:

Il Consiglio dell'UE ha deciso di sbloccare i fondi europei per la Polonia una volta raggiunte tre "pietre miliari": (1) la Camera disciplinare della Corte Suprema dovrà essere sciolta e sostituita da un tribunale indipendente; (2) il regime disciplinare dovrà essere riformato; (3) i giudici che sono stati colpiti dalle decisioni prese dalla Camera disciplinare avranno il diritto di far riesaminare i loro casi dalla nuova Camera.

Le quattro organizzazioni europee dei giudici sostengono che queste tappe non sono all'altezza di quanto richiesto per garantire un'efficace protezione dell'indipendenza dei giudici e della magistratura e non tengono conto delle sentenze della CGUE in materia.

La decisione danneggia la posizione dei giudici sospesi in Polonia: ad esempio, la CGUE ha stabilito che i giudici polacchi colpiti da procedure disciplinari illegittime devono essere reintegrati subito, senza ritardi o procedure, mentre una delle "pietre miliari" introdurrebbe una procedura di oltre un anno, dall'esito incerto.

Questa decisione danneggia anche il sistema giudiziario europeo nel suo complesso e la posizione di ogni singolo giudice europeo. Tutti i giudici di ogni singolo Stato membro sono anche giudici europei e devono applicare il diritto dell'UE, in un sistema basato sulla fiducia reciproca. Se il sistema giudiziario di uno o più Stati membri non offre più garanzie di indipendenza e di rispetto dei principi fondamentali dello Stato di diritto, l'intero sistema giudiziario europeo ne risente innegabilmente (il cosiddetto "effetto di ricaduta").

Il motivo per cui si chiede l'annullamento della decisione del Consiglio dell'UE è quello di rendere esplicito il principio secondo cui le sentenze della CGUE sul tema dell'indipendenza delle magistrature devono essere eseguite senza indugio e integralmente, e le istituzioni dell'UE non possono nemmeno in parte agire in modo incoerente con esse. La decisione del Consiglio dell'UE viola questo principio, in quanto non è prevista l'esecuzione integrale - cioè incondizionata - delle sentenze della CGUE.

**L'obiettivo dell'azione legale è stabilire il principio sopra menzionato e impedire che la Commissione decida di sbloccare i fondi UE per la Polonia fino a quando le sentenze della CGUE non saranno pienamente e completamente applicate.**

Si ringrazia *The Good Lobby Profs* per il supporto fornito.



*L'**Associazione dei Giudici Amministrativi Europei (AEAJ)** è stata fondata nel 2000 come associazione di vertice a livello europeo delle associazioni nazionali di giudici amministrativi ed è aperta all'adesione delle associazioni (nonché dei singoli membri) di tutti i Paesi membri del Consiglio d'Europa. Per il momento, comprende membri di 34 Paesi europei e rappresenta circa 6.000 giudici amministrativi. I suoi obiettivi sono, tra l'altro, non solo ampliare la conoscenza e lo scambio su questioni di interesse giuridico comune tra i giudici amministrativi in Europa, ma anche rafforzare e promuovere gli interessi professionali dei giudici amministrativi, compresa la difesa dell'indipendenza giudiziaria in tutti i suoi vari aspetti.*

*Sito web: http://www.aeaj.org*

*Contatti: Edith Zeller (Presidente) + 43 676 629 1840 / edith.zeller@vgw.wien.gv.at*

*L'**International Association of Judges (** -Unione Internazionale dei Magistrati) è stata fondata a Salisburgo (Austria) nel 1953. È un'organizzazione professionale, non politica e internazionale, che riunisce associazioni nazionali di giudici, non singoli giudici, approvate dal Consiglio centrale per l'ammissione all'Associazione. Lo scopo principale dell'Associazione è quello di salvaguardare l'indipendenza della magistratura, che è un requisito essenziale della funzione giudiziaria, garantendo i diritti umani e la libertà. L'organizzazione comprende attualmente 94 associazioni nazionali o gruppi rappresentativi, provenienti da cinque continenti. L'AIG ha quattro gruppi regionali: l'Associazione europea dei giudici, il Gruppo iberoamericano, il Gruppo africano e il Gruppo asiatico, nordamericano e oceaniano. Lo scopo dei Gruppi regionali è quello di discutere i problemi locali riguardanti la magistratura. Si riuniscono di solito due volte l'anno e possono approvare risoluzioni su questioni generali che riguardano la magistratura dell'intera area interessata, o in particolare su uno o più Paesi. In casi particolari possono essere organizzate anche missioni e relazioni ad hoc.*

*L'**Associazione Europea dei Giudici** è la parte più grande della IAJ e riunisce 48 associazioni di giudici, una per ogni Stato europeo.*

***Associazione Internazionale dei Giudici (IAJ)***

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***Associazione Europea dei Giudici (EAJ)***

*Contatto: Duro Sessa (Presidente) + 38 598 278 216 / duro.sessa@vsrh.hr*

***Rechters voor Rechters (Giudici per i Giudici)** è stata istituita nel 1999 come fondazione indipendente e apolitica creata da giudici per sostenere i colleghi giudici all'estero che hanno incontrato problemi o rischiano di incontrare problemi a causa della loro pratica professionale. Questi problemi sono per lo più legati alla (presunta) violazione della loro indipendenza professionale. J4J si occupa anche di giudici che sono stati destituiti per motivi preoccupanti, sono stati arrestati e imprigionati, sottoposti a pressioni, minacciati o addirittura assassinati.*

*Sito web: http://www.rechtersvoorrechters.nl*

*Contatti: Tamara Trotman (Presidente) / info@rechtersvoorrechters.nl*

***Magistrats Européens pour la Démocratie et les Libertés (MEDEL)** è un'associazione fondata nel 1985 a Strasburgo, in Francia, che riunisce 24 associazioni di giudici e pubblici ministeri provenienti da 16 Paesi europei, tutti membri del Consiglio d'Europa, per un totale di circa 18.000 magistrati. I suoi obiettivi sono, tra gli altri, l'instaurazione di un dibattito comune tra i magistrati di diversi Paesi per sostenere l'integrazione comunitaria, in vista della creazione di un'unione politica europea, la difesa dell'indipendenza della magistratura di fronte a ogni altro potere e a interessi specifici, la democratizzazione della magistratura, nel suo reclutamento e nelle condizioni di esercizio della professione, in particolare di fronte all'organizzazione gerarchica, e il rispetto, in ogni circostanza, dei valori giuridici propri dello Stato democratico di diritto.*

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PRESSEMITTEILUNG

**VIER EUROPÄISCHE RICHTERORGANISATIONEN VERKLAGEN DEN EUROPÄISCHEN RAT WEGEN MISSACHTUNG DER URTEILE DES EUGH BEI DER oder DURCH DIE ENTSCHEIDUNG, GELDER FÜR POLEN ZU ENTSPERREN**

***Europa, 28. August 2022***

Die vier europäischen Richterorganisationen:

*Vereinigung Europäischer Verwaltungsrichter (AEAJ*)

*Europäische Richtervereinigung* (EAJ, eine regionale Zweigstelle der *Internationalen Vereinigung der Richter – IAJ*)

*Rechters voor Rechters* (Richter für Richter)

*Magistrats Européens pour la Democratie et les Libertés* (MEDEL)

Prozessbevollmächtigte: Carsten Zatschler SC, Emily Egan McGrath BL, Barristers, mit Unterstützung von Anne Bateman und Maeve Delargy, Solicitors, of Philip Lee LLP,

**haben heute beim Gerichtshof der Europäischen Union (EuGH) eine Klage gegen den Europäischen Rat wegen seiner Entscheidung eingereicht, den Aufbau- und Resilienzfonds für Polen zu entsperren.**

Bei der Klage handelt es sich um eine Nichtigkeitsklage nach Artikel 263 des Vertrags über die Arbeitsweise der Europäischen Union (AEUV) gegen den Durchführungsbeschluss des Rates vom 17. Juni 2022, betreffend die Republik Polen, der gemäß der Verordnung (EU) 2021/241 des Europäischen Parlaments und des Rates vom 12. Februar 2021 zur Einrichtung der Aufbau- und Resilienzfazilität erlassen wurde.

Jede der vier Richterorganisationen folgt der Verpflichtung, die Unabhängigkeit der Justiz und die Unparteilichkeit der Richterinnen und Richter überall in der EU zu verteidigen; drei von ihnen haben (Verbände von) Richterinnen und Richtern aus Polen als Mitglieder. Sie argumentieren wie folgt:

Der Europäische Rat beschloss, die EU-Mittel für Polen zu entsperren, sobald drei „Meilensteine“ erfüllt sind: (1) die Disziplinarkammer des Obersten Gerichtshofs muss aufgelöst und durch ein unabhängiges Gericht ersetzt werden; (2) das Disziplinarregime muss reformiert werden; (3) Richterinnen und Richter, die von den Entscheidungen der Disziplinarkammer betroffen sind, haben das Recht, ihre Fälle von der neuen Kammer überprüfen zu lassen.

Die vier europäischen Richterorganisationen argumentieren, dass diese Meilensteine hinter dem zurückbleiben, was erforderlich ist, um einen wirksamen Schutz der Unabhängigkeit der Richterinnen und Richter und der Justiz zu gewährleisten und die diesbezüglichen Urteile des EuGH missachten.

Die Entscheidung verschlechtert die Position der suspendierten Richterinnen und Richter in Polen: der EuGH hat entschieden, dass die polnischen Richterinnen und Richter, die von rechtswidrigen Disziplinarverfahren betroffen sind, unverzüglich, ohne Verzögerung und ohne ein Verfahren wiedereingesetzt werden sollten, während einer der Meilensteine ein Verfahren von mehr als einem Jahr mit einem ungewissen Ergebnis vorsehen würde.

Diese Entscheidung schadet auch der europäischen Justiz insgesamt und der Position jeder einzelnen europäischen Richterin bzw. jedes einzelnen europäischen Richters. Alle Richterinnen und Richter jedes einzelnen Mitgliedstaats sind auch europäische Richterinnen und Richter, die EU-Recht anwenden müssen, und zwar in einem System, das auf gegenseitigem Vertrauen beruht. Wenn die Justiz eines oder mehrerer Mitgliedstaaten keine Garantien mehr für die Unabhängigkeit und die Achtung der Grundprinzipien der Rechtsstaatlichkeit bietet, ist die gesamte europäische Justiz unbestreitbar betroffen (sogenannter spillover-effect).

Der Grund für das Begehren, die Entscheidung des Europäischen Rates für nichtig zu erklären besteht darin, den Grundsatz zu verdeutlichen, dass Urteile des EuGH zum Thema der Unabhängigkeit der Justiz unverzüglich und vollständig vollstreckt werden sollten und dass die EU-Organe auch nicht bloß l teilweise inkohärent mit Urteilen des EuGH handeln dürfen. Der Beschluss des Europäischen-Rates verstößt gegen diesen Grundsatz, da damit keine vollständige – d. h. bedingungslose – Vollstreckung von Urteilen des EuGH vorliegt.

**Ziel der Klage ist es, dass der genannten Grundsatz festgestellt wird und dass eine Entscheidung der Kommission, EU-Mittel für Polen zu entsperren, solange verhindert wird, bis die Urteile des EuGH vollständig umgesetzt sind.**

Unser Dank gilt den *Good Lobby Profs* für ihre Unterstützung.



***Die Vereinigung Europäischer Verwaltungsrichter (AEAJ)*** *wurde im Jahr 2000 als europaweiter Dachverband nationaler Vereinigungen von Verwaltungsrichtern gegründet und ist offen für die Mitgliedschaft von Vereinigungen (sowie einzelnen Mitgliedern) aller Länder, die Mitglied des Europarates sind. Derzeit umfasst sie Mitglieder aus 34 europäischen Ländern und vertritt ca. 6000 Verwaltungsrichterinnen und Verwaltungsrichter. Ziel ist es unter anderem nicht nur, das Wissen und den Austausch über Fragen von gemeinsamem Rechtsinteresse unter den Verwaltungsrichterinnen Verwaltungsrichtern in Europa zu erweitern, sondern auch die beruflichen Interessen der Verwaltungsrichterinnen und Verwaltungsrichter zu stärken und zu fördern, wozu auch die Verteidigung der Unabhängigkeit der Justiz in all ihren verschiedenen Aspekten gehört.*

*Website: http://www.aeaj.org*

*Kontakt: Edith Zeller (Präsidentin) + 43 676 629 1840/ edith.zeller@vgw.wien.gv.at* mailto:edith.zeller@vgw.wien.gv.at

*Der **Internationale Vereinigung der Richter** (IAJ) wurde 1953 in Salzburg (Österreich) gegründet. Es ist eine professionelle, unpolitische, internationale Organisation, deren Mitglieder nationale Vereinigungen von Richterinnen und Richtern sind, deren Aufnahme in die Vereinigung vom Zentralrat genehmigt wurde. Das Hauptziel der Vereinigung besteht darin, die Unabhängigkeit der Justiz zu wahren, die ein wesentliches Erfordernis der justiziellen Funktion ist und Menschenrechte und Freiheit gewährleistet. Die Organisation umfasst derzeit 94 solcher nationalen Vereinigungen oder repräsentative Gruppen aus fünf Kontinenten. Die IAJ hat vier regionale Gruppen: die Europäische Richtervereinigung (EAJ), die Iberoamerikanische Gruppe, die Afrikanische Gruppe, die Asiatische Gruppe, die Nordamerikanische und Ozeanische Gruppe. Ziel der Regionalgruppen ist es, lokale Probleme im Bereich der Justiz zu erörtern. Sie treffen sich in der Regel zweimal im Jahr und können entweder zu allgemeinen Fragen, die die Justiz der gesamten Region betreffen, oder speziell in Bezug auf ein oder mehrere bestimmte Länder Beschlüsse fassen. In bestimmten Fällen können auch ad-hoc-Missionen und -Berichte organisiert werden.*

*Die **Europäische Richtervereinigung (EAJ)** ist die größte Regionalgruppe der IAJ, die 48 Richtervereinigungen umfasst t.*

***Internationale Vereinigung der Richter (IAJ)***

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***Europäische Richtervereinigung (EAJ)***

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***Rechters voor Rechters (Judges for Judges)*** *wurde 1999 als unabhängige und unpolitische Stiftung gegründet. Sie wurde von Richterinnen und Richtern gegründet, um Richterkollegen im Ausland zu unterstützen, die aufgrund ihrer beruflichen Tätigkeit Probleme haben oder riskieren, Probleme zu bekommen. Diese Probleme hängen hauptsächlich mit (vermuteten) Verstößen gegen ihre berufliche Unabhängigkeit zusammen. J4J beschäftigt sich auch mit Richterinnen und Richtern, die aus bedenklichen Gründen entlassen wurden, die verhaftet und inhaftiert, unter Druck gesetzt, bedroht oder sogar ermordet wurden.*

*Website: http://www.rechtersvoorrechters.nl*

*Kontakt: Tamara Trotman (Präsidentin)/ info@rechtersvoorrechters.nl*

***Magistrats Européens pour la Démocratie et les Libertés (MEDEL)*** *ist eine Vereinigung, die 1985 in Straßburg, Frankreich, gegründet wurde und 24 Vereinigungen von Richterinnen und Richtern sowie Staatsanwältinnen und Staatsanwälten aus 16 europäischen Ländern, alle Mitglieder des Europarates, umfasst und die insgesamt rund 18.000 Richterinnen und Richter vertritt. Ihre Ziele sind unter anderem die Einrichtung einer gemeinsamen Diskussion zwischen Richterinnen und Richtern aus verschiedenen Ländern zur Unterstützung der Integration in die europäischen Gemeinschaft im Hinblick auf die Schaffung einer europäischen politischen Union, die Verteidigung der Unabhängigkeit der Justiz gegenüber jeder anderen Staatsgewalt sowie der spezifischen Interessen, die Demokratisierung der Justiz, ihre Aufnahme in den Richterberuf und die Bedingungen für die Ausübung des Berufs, insbesondere hinsichtlich der hierarchischen Organisation, und schlechthin die Achtung der Rechtswerte, die dem demokratischen Staat auf der Grundlage der Rechtsstaatlichkeit eigen sind.*

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COMUNICADO DE PRENSA

## CUATRO ORGANIZACIONES EUROPEAS DE MAGISTRADOS DEMANDAN AL CONSEJO DE LA UE POR HACER CASO OMISO DE LAS SENTENCIAS DEL TRIBUNAL DE LA UE EN LA DECISIÓN DE DESBLOQUEAR LOS FONDOS A POLONIA

***Europa, 28 de agosto de 2022***

Las cuatro principales organizaciones europeas de jueces:

*Association of European Administrative Judges* (AEAJ)

*European Association of Judges* (EAJ, rama regional de la *International Association of Judges - IAJ*)

*Rechters voor Rechters* (Judges for Judges)

*Magistrats Européens pour la Democratie et les Libertés* (MEDEL)

representadas por Carsten Zatschler SC, Emily Egan McGrath BL, Barristers, con la asistencia de Anne Bateman y Maeve Delargy, Solicitors, of Philip Lee LLP,

**han presentado hoy ante el Tribunal de Justicia de la Unión Europea (TJUE) una demanda contra el Consejo de la UE por su decisión de desbloquear los fondos de Recuperación y Resiliencia para Polonia.**

La demanda tiene por objeto instar la nulidad, con arreglo al artículo 263 del Tratado de Funcionamiento de la Unión Europea (TFUE), de la Decisión de Ejecución del Consejo de 17 de junio de 2022, dirigida a la República de Polonia, adoptada en virtud del Reglamento (UE) 2021/241 del Parlamento Europeo y del Consejo, de 12 de febrero de 2021, por el que se establece el Mecanismo de Recuperación y Resiliencia.

Las cuatro organizaciones de jueces tienen como misión la defensa de la independencia judicial y la imparcialidad de los jueces en toda la UE; tres de ellas tienen como miembros a (asociaciones de) jueces de Polonia. Se argumenta lo siguiente:

El Consejo de la UE decidió desbloquear los fondos de la UE para Polonia una vez que se cumplan tres "objetivos": (1) la Sala Disciplinaria del Tribunal Supremo deberá ser disuelta y sustituida por un tribunal independiente; (2) el régimen disciplinario debe ser reformado; (3) los jueces que se hayan visto afectados por las decisiones adoptadas por la Sala Disciplinaria tendrán derecho a que sus casos sean revisados por la nueva sala.

Las cuatro organizaciones europeas de jueces sostienen que estos objetivos no alcanzan para garantizar la protección efectiva de la independencia de los jueces y del poder judicial e ignoran las sentencias del TJUE en la materia.

La decisión perjudica la posición de los jueces suspendidos en Polonia: por ejemplo, el TJUE ha declarado que los jueces polacos perjudicados por los procedimientos disciplinarios ilegales deben ser reincorporados de inmediato, sin demora ni procedimiento, mientras que uno de los objetivos introduciría un procedimiento de más de un año con un resultado incierto.

Esta decisión también perjudica al poder judicial europeo en su conjunto y a la posición de cada uno de los jueces europeos. Los jueces de cada Estado miembro son también jueces europeos, que deben aplicar el Derecho de la UE, en un sistema basado en la confianza mutua. Si el poder judicial de uno o varios Estados miembros deja de ofrecer garantías de independencia y de respeto a los principios básicos del Estado de Derecho, el conjunto del poder judicial europeo se ve innegablemente afectado (el llamado "efecto de contagio").

La razón para pedir la nulidad de la decisión del Consejo de la UE es hacer explicito el principio de que las sentencias del TJUE sobre el tema de la independencia de los poderes judiciales deben ser ejecutadas sin demora y en su totalidad, y que las instituciones de la UE no pueden actuar, ni siquiera parcialmente, de forma incoherente con ellas, lo que debe quedar explicito por esta demanda. La decisión del Consejo de la UE viola este principio, porque no hay una ejecución plena -es decir, incondicional- de las sentencias del TJUE.

**El objetivo de la demanda es establecer el principio citado y evitar una decisión de la Comisión de desbloquear los fondos de la UE para Polonia hasta que las sentencias del TJUE se ejecuten total y completamente.**

Se agradece especialmente el apoyo recibido por parte de *The Good Lobby Profs*.



*La **Asociación de Jueces Administrativos Europeos (AEAJ)** se fundó en el año 2000 como una asociación de ámbito europeo que agrupa a las asociaciones nacionales de jueces administrativos y está abierta a la adhesión de asociaciones (así como de miembros individuales) de todos los países que pertenecen al Consejo de Europa. Por el momento, incluye a miembros de 34 países europeos y representa a unos 6.000 jueces administrativos. Sus objetivos son, entre otros, no sólo ampliar el conocimiento y el intercambio sobre asuntos de interés jurídico común entre los jueces administrativos de Europa, sino también fortalecer y promover los intereses profesionales de los jueces administrativos, lo que incluye la defensa de la independencia judicial en todos sus diversos aspectos.*

*Sitio web: http://www.aeaj.org*

*Contacto: Edith Zeller (Presidenta) + 43 676 629 1840 / edith.zeller@vgw.wien.gv.at*

*La **Asociación Internacional de Jueces** fue fundada en Salzburgo (Austria) en 1953. Es una organización profesional, apolítica e internacional, que reúne a asociaciones nacionales de jueces, no a jueces individuales, acuya solicitud debe ser aprobada por el Consejo Central para su admisión en la Asociación. El objetivo principal de la Asociación es salvaguardar la independencia del poder judicial, que es un requisito esencial de la función judicial, garantizando los derechos humanos y la libertad. En la actualidad, la organización engloba a 94 de estas asociaciones nacionales o grupos representativos, procedentes de los cinco continentes. La IAJ cuenta con cuatro Grupos Regionales: la Asociación Europea de Jueces, el Grupo Iberoamericano, el Grupo Africano y el Grupo Asiático, Norteamericano y Oceánico. El objetivo de los Grupos Regionales es discutir los problemas locales relacionados con la judicatura. Por lo general, se reúnen dos veces al año y pueden aprobar resoluciones sobre cuestiones generales que afectan a la judicatura de toda la zona en cuestión, o específicamente sobre uno o varios países determinados. También se pueden organizar misiones e informes ad hoc en casos concretos.*

*La **Asociación Europea de Jueces** es la parte más importante de la IAJ y reúne a 48 asociaciones de jueces, una por cada Estado europeo.*

***Asociación Internacional de Jueces (IAJ)***

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***Asociación Europea de Jueces (EAJ)***

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***Rechters voor Rechters (Jueces para Jueces)** se creó en 1999 como una fundación independiente y apolítica creada por jueces para apoyar a otros jueces en el extranjero que hayan tenido problemas o corran el riesgo de tenerlos debido a su ejercicio profesional. Estos problemas están relacionados principalmente con la (presunta) violación de su independencia profesional. J4J también se ocupa de los jueces que han sido dados de baja por motivos inquietantes, que han sido detenidos y encarcelados, que han sido objeto de presiones, que han sido amenazados o incluso asesinados.*

*Sitio web: http://www.rechtersvoorrechters.nl*

*Contacto: Tamara Trotman (Presidenta) / info@rechtersvoorrechters.nl*

***Magistrats Européens pour la Démocratie et les Libertés (MEDEL)**, es una asociación que se fundó en 1985 en Estrasburgo, Francia, y reúne a 24 asociaciones de jueces y fiscales, procedentes de 16 países europeos, todos ellos miembros del Consejo de Europa, que representan un total de unos 18.000 magistrados. Sus objetivos son, entre otros, la creación de un debate común entre los magistrados de diferentes países para apoyar la integración comunitaria, con vistas a la creación de una unión política europea, la defensa de la independencia del poder judicial frente a cualquier otro poder así como a intereses específicos, la democratización del poder judicial, en su contratación y en las condiciones de ejercicio de la profesión, en particular frente a la organización jerárquica, y el respeto, en todas las circunstancias, de los valores jurídicos propios del Estado democrático de derecho.*

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**COMUNICADO DE IMPRENSA**

## QUATRO ORGANIZAÇÕES EUROPEIAS DE JUÍZES PROCESSAM O CONSELHO DA UE POR IGNORAR OS ACÓRDÃOS DO TRIBUNAL DA UE NA DECISÃO DE DESBLOQUEAR FUNDOS PARA A POLÓNIA

***Europa, 28 de agosto de 2022***

As quatro principais organizações europeias de juízes:

*Associação dos Juízes Administrativos Europeus (AEAJ)*

*Associação Europeia de Juízes* (AEJ, um ramo regional da *Associação Internacional de Juízes* - IAJ)

*Rechters voor Rechters* (*Judges for Judges*)

*Magistrats Européens pour la Democratie et les Libertés (MEDEL)*

representadas por Carsten Zatschler SC, Emily Egan McGrath BL, Barristers, assistidos por Anne Bateman e Maeve Delargy, Solicitors, of Philip Lee LLP,

instauraram hoje perante o Tribunal de Justiça da União Europeia (TJUE) uma ação contra o Conselho da União Europeia, impugnando a decisão deste de desbloquear as verbas do Fundo de Recuperação e Resiliência para a Polónia.

O processo é um recurso de anulação nos termos do artigo 263.º do Tratado sobre o Funcionamento da União Europeia (TFUE) contra a decisão de execução do Conselho de 17 de junho de 2022, dirigida à República da Polónia, adotada ao abrigo do Regulamento (UE) 2021/241 do Parlamento Europeu e do Conselho de 12 de fevereiro de 2021, que institui o Mecanismo de Recuperação e Resiliência.

Cada uma das quatro organizações de juízes tem como missão a defesa da independência e imparcialidade dos juízes em toda a UE; três delas têm (associações de) juízes da Polónia como membros. Argumentam da seguinte forma:

O Conselho da UE decidiu desbloquear os fundos da UE para a Polónia uma vez cumpridos três "marcos": (1) a Câmara Disciplinar do Supremo Tribunal terá de ser dissolvida e substituída por um tribunal independente; (2) o regime disciplinar terá de ser reformado; (3) os juízes que tenham sido afetados pelas decisões tomadas pela Câmara Disciplinar terão o direito de ver os seus casos revistos pela nova câmara.

As quatro organizações europeias de juízes argumentam que estes marcos ficam aquém do que é necessário para assegurar uma proteção eficaz da independência dos juízes e do poder judicial e ignoram os acórdãos do TJUE sobre a matéria.

A decisão prejudica a posição dos juízes suspensos na Polónia: por exemplo, o TJUE decidiu que os juízes polacos afetados por processos disciplinares ilegais deveriam ser imediatamente reintegrados, sem qualquer delonga ou procedimento, enquanto que um dos marcos introduziria um procedimento de mais de um ano, com um resultado incerto.

Esta decisão prejudica também a magistratura europeia no seu conjunto e a posição de cada um dos juízes europeus. Todos os juízes de cada Estado Membro são também juízes europeus, tendo de aplicar o Direito da União, num sistema baseado na confiança mútua. Se o sistema judicial de um ou mais Estados-Membros já não oferece garantias de independência e respeito pelos princípios básicos do Estado de Direito, todo o sistema judicial europeu é inegavelmente afetado (o chamado "efeito de spillover").

A razão para pedir a anulação da decisão do Conselho da UE é tornar explícito o princípio de que as decisões do TJUE sobre a independência dos juízes devem ser aplicadas sem demora e na íntegra, e que as instituições da UE não podem agir de forma incompatível com elas, nem sequer parcialmente. A decisão do Conselho da UE viola este princípio, porque não existe uma execução integral - ou seja, incondicional – dos acórdãos do TJUE.

**O objetivo do processo é afirmar o princípio acima mencionado e impedir uma decisão da Comissão de desbloquear fundos da UE para a Polónia até que os acórdãos do TJUE sejam plena e completamente executados.**

Reconhece-se com gratidão o apoio prestado por *The Good Lobby Profs*.



*A **Associação dos Juízes Administrativos Europeus** (AEAJ) foi fundada em 2000 como uma associação de cúpula a nível europeu de associações nacionais de juízes administrativos e está aberta à adesão de associações (bem como de membros individuais) de todos os países que são membros do Conselho da Europa. Por enquanto, engloba membros de 34 países europeus e representa aproximadamente 6000 juízes administrativos. Entre outros, os seus objetivos são não só alargar o conhecimento e o intercâmbio sobre questões de interesse jurídico comum entre juízes administrativos na Europa, mas também reforçar e promover os interesses profissionais dos juízes administrativos, o que inclui a defesa da independência judicial em todos os seus vários aspetos.*

*Website: http://www.aeaj.org*

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*A **Associação Internacional de Juízes** foi fundada em Salzburgo (Áustria) em 1953. É uma organização profissional, não política e internacional, que reúne associações nacionais de juízes, e não juízes individuais, aprovada pelo Conselho Central para admissão à Associação. O principal objetivo da Associação é salvaguardar a independência da magistratura, que é um requisito essencial da função judicial, garantindo os direitos humanos e a liberdade. A organização engloba atualmente 94 associações nacionais ou grupos representativos, de cinco Continentes. A IAJ tem quatro Grupos Regionais: a Associação Europeia de Juízes, o Grupo Ibero-americano, o Grupo Africano, o Grupo Asiático, Norte-Americano e da Oceânia. O objetivo dos Grupos Regionais é discutir os problemas locais relativos ao Poder Judicial. Normalmente reúnem-se duas vezes por ano e podem aprovar resoluções quer sobre questões gerais que afetam o Judiciário de toda a área em questão, quer especificamente sobre um ou mais países determinados. Missões e relatórios ad hoc podem também ser organizados em casos particulares.*

*A Associação Europeia de Juízes é o maior grupo da IAJ, reunindo 48 associações de juízes, uma por cada Estado europeu.*

***Associação Internacional de Juízes (IAJ)***

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***Associação Europeia de Juízes (EAJ)***

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***Rechters voor Rechters (Judges for Judges)** foi criada em 1999 como uma fundação independente e não política criada por juízes para apoiar colegas juízes no estrangeiro que tenham encontrado problemas ou corram o risco de encontrar problemas devido à sua prática profissional. Estes problemas estão principalmente relacionados com a (presumida) violação da sua independência profissional. J4J também se preocupa com os juízes, que foram dispensados por razões perturbadoras, foram detidos e encarcerados, colocados sob pressão, são ameaçados ou mesmo assassinados.*

*Website: http://www.rechtersvoorrechters.nl*

*Contacto: Tamara Trotman (Presidente) / info@rechtersvoorrechters.nl*

***Magistrats Européens pour la Démocratie et les Libertés (MEDEL)**, é uma associação que foi fundada em 1985 em Estrasburgo, França, e reúne 24 associações de juízes e procuradores, provenientes de 16 países europeus, todos membros do Conselho da Europa, representando um total de cerca de 18.000 magistrados. Os seus objetivos são, entre outros, o estabelecimento de um debate comum entre magistrados de diferentes países para apoiar a integração da Europa, tendo em vista a criação de uma união política europeia, a defesa da independência da magistratura face a qualquer outro poder, bem como de interesses específicos, a democratização da magistratura, no seu recrutamento e nas condições de exercício da profissão, nomeadamente face à organização hierárquica, e o respeito, em todas as circunstâncias, dos valores jurídicos específicos do Estado democrático baseado no Estado de Direito.*

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**CZTERY EUROPEJSKIE ORGANIZACJE SĘDZIOWSKIE POZYWAJĄ RADĘ UNII EUROPEJSKIEJ W ZWIĄZKU Z NIEPRZESTRZEGANIEM ORZECZEŃ TRYBUNAŁÓW PRZY PODJĘCIU DECYZJI DOTYCZĄCEJ ODBLOKOWANIA FUNDUSZY DLA POLSKI**

***Europa, 28 sierpnia 2022 r.***

Cztery główne organizacje sędziowskie w Europie:

*Stowarzyszenie Europejskich Sędziów Administracyjnych (AEAJ)*

*Europejskie Stowarzyszenie Sędziów (EAJ*, działające w ramach *Międzynarodowego Stowarzyszenia Sędziów – IAJ)*

*Rechters voor Rechters (Judges for Judges)*

*Magistrats Européens pour la Democratie et les Libertés (MEDEL)*

reprezentowane przez Carsten Zatschler SC, Emily Egan McGrath BL, adwokatów, wraz z Anne Bateman i Maeve Delargy, radców prawnych, of Philip Lee LLP,

**złożyły dziś do Trybunału Sprawiedliwości Unii Europejskiej (TSUE) skargę przeciwko Radzie Unii Europejskiej w związku z decyzją odblokowującą środki z Planu Naprawy i Odporności dla Polski.**

Jest to skarga o stwierdzenie nieważności, w trybie art. 263 Traktatu o Funkcjonowaniu Unii Europejskiej (TFUE) przeciwko Radzie, dotycząca Decyzji z 17 stycznia 2022 r., kierowanej do Polski, przyjętej w ramach Rozporządzenia Parlamentu Europejskiego i Rady (UE) 2021/241 z dnia 12 lutego 2021 r. ustanawiającego Instrument na rzecz Odbudowy i Zwiększania Odporności.

Każda z czterech organizacji sędziowskich ma w swoich założeniach obronę niezależności sądów i niezawisłości sędziów w każdym kraju Unii Europejskiej; trzy ze skarżących organizacji mają wśród członków sędziów z Polski.

Wyżej wymienione organizacje argumentują następująco:

Rada Unii Europejskiej zdecydowała odblokować fundusze unijne dla Polski po spełnieniu przez Polskę trzech „kamieni milowych": (1) likwidacji Izby Dyscyplinarnej i utworzenia w to miejsce niezależnego sądu, (2) zreformowania systemu dyscyplinarnego sędziów, (3) umożliwienia sędziom, co do których Izba Dyscyplinarna podjęła decyzje, dokonania rewizji ich spraw w nowej izbie.

Cztery organizacje sędziowskie wskazują, że owe kamienie milowe dalece nie wystarczają do zapewnienia niezależności sądów i niezawisłości sędziowskiej oraz lekceważą orzeczenia TSUE w tym zakresie.

Decyzja uderza w zawieszonych sędziów z Polski: dla przykładu, TSUE orzekł, że sędziowie zawieszeni decyzjami Izby Dyscyplinarnej winni zostać natychmiast przywróceni do pracy, bez konieczności prowadzenia odrębnego postępowania w tym zakresie. Tymczasem „kamień milowy" zakłada ponad roczną procedurę z niepewnym zakończeniem.

Ta decyzja uderza także w całe sądownictwo europejskie, a także w pozycję każdego europejskiego sędziego. Sędziowie z państw członkowskich UE są sędziami europejskimi, zobowiązanymi do stosowania prawa europejskiego w systemie bazującym na wzajemnym zaufaniu. W sytuacji gdy sądownictwo jednego z krajów członkowskich nie zapewnia niezależności sędziowskiej oraz poszanowania podstawowych zasad praworządności, całe sądownictwo w Unii Europejskiej jest tym niezaprzeczalnie dotknięte ( tzw. „efekt rozlania").

Przyczyną domagania się stwierdzenia nieważności decyzji Rady Unii Europejskiej jest wyniesienie jako zasady, że wyroki TSUE dotyczące niezależności sądownictwa winny być wprowadzane w życie bez opóźnień, w całości, a także że instytucje UE nie mogą działać (choćby częściowo) w niezgodzie z nimi. Decyzja Rady UE łamie powyższą zasadę, to jest nie realizuje pełnego i bezwarunkowego wprowadzenia wyroków TSUE w życie.

**Zamiarem skargi jest zatem ustanowienie powyższej zasady oraz wyegzekwowanie od Komisji pełnej realizacji orzeczeń TSUE przed podjęciem decyzji o wypłacie środków unijnych dla Polski.**

Dziękujemy za wsparcie udzielone przez *The Good Lobby Profs*.

***Stowarzyszenie Europejskich Sędziów Administracyjnych*** *zostało założone w 2000 r jako stowarzyszenie działające na terenie Europy, zrzeszające krajowe stowarzyszenia sędziów administracyjnych (jak też indywidualnych członków), otwarte dla sędziów z wszystkich krajów będących członkami Rady Europy. Zrzesza obecnie członków z 34 krajów europejskich i reprezentuje około 6000 sędziów administracyjnych. AEAJ koncentruje się nie tylko na wymianie wiedzy i doświadczeń między sędziami administracyjnymi w Europie, ale także na umacnianiu i promowaniu interesów sędziów administracyjnych, a więc także na obronie niezależności sędziowskiej we wszystkich jej aspektach.*

*Strona: http://www.aeaj.org*

*Kontakt: Edith Zeller (President) + 43 676 629 1840 / edith.zeller@vgw.wien.gv.at*

***Międzynarodowe Stowarzyszenie Sędziów*** *powstało w Salzburgu (Austria) w 1953 r. Jest to profesjonalna, apolityczna, międzynarodowa organizacja, zrzeszająca stowarzyszenia sędziowskie, nie indywidulanych sędziów, zatwierdzone przez Centralną Radę ds przyjęcia do Stowarzyszenia. Głównym założeniem IAJ jest ochrona niezależności sądownictwa, jako niezbędnego warunku zapewnienia praw i wolności człowieka. Stowarzyszenie zrzesza w tej chwili 94 stowarzyszenia lub grupy reprezentatywne z pięciu kontynentów. IAJ ma cztery grupy regionalne: Europejskie Stowarzyszenie Sędziów; Grupę Iberoamerykańską; Grupę Afrykańską oraz Grupę Azjatycko – Północnoamerykańsko – Oceaniczną. Celem Grup Regionalnych jest omawianie lokalnych problemów dotyczących sądownictwa. Grupy te zazwyczaj spotykają się dwa razy w roku, są uprawnione do podejmowania uchwał dotyczących zarówno ogólnych kwestii dotyczących sądownictwa, jak też mogą koncentrować się na jednym lub kilku krajach. W szczególnych przypadkach organizuje się misje specjalne, czy podejmowane są uchwały ad hoc.*

*Europejskie Stowarzyszenie Sędziów jest najliczniejsze spośród całego IAJ, zrzesza 48 stowarzyszeń sędziowskich, po jednym z każdego europejskiego kraju.*

***Międzynarodowe Stowarzyszenie Sędziów (IAJ)***

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***Europejskie Stowarzyszenie Sędziów (EAJ)***

*Konatkt: Duro Sessa (President) + 38 598 278 216 / duro.sessa@vsrh.hr*

***Rechters voor Rechters (Judges for Judges)*** *powstało w 1999 r. jako apolityczna, niezależna fundacja, stworzona przez sędziów w celu wsparcia sędziów za granicą, którzy w związku z wykonywanym zawodem znaleźli się w trudnej sytuacji, lub też istnieje ryzyko, że z uwagi na funkcję sędziego w trudnej sytuacji się znajdą. Odnosi się to w szczególności do zagrożenia niezawisłości sędziowskiej. Judges for Judges szczególną troską obejmuje sędziów, którzy zostali zawieszeni, zatrzymani, aresztowani, uwięzieni, poddani presji, zaatakowani fizycznie.*

*Strona: http://www.rechtersvoorrechters.nl*

*Kontakt: Tamara Trotman (President) / info@rechtersvoorrechters.nl*

***Sędziowie i Prokuratorzy Europejscy dla Demokracji i Wolności (MEDEL)*** *jest stowarzyszeniem utworzonym w 1985 r. w Strasburgu we Francji, zrzeszającym 24 stowarzyszenia sędziów i prokuratorów, z 16 krajów europejskich, będących członkami Rady Europy, reprezentującym około 18.000 sędziów i prokuratorów łącznie. Celem MEDEL jest, między innymi, upowszechnienie dialogu wśród sędziów i prokuratorów z różnych krajów wzmacniającego integrację europejską, z myślą o utworzeniu europejskiej unii politycznej, obrona niezależnosci sądów tak wobec innych władz, jak też wobec jakichkolwiek grup interesów, demokratyzacja sądownictwa, w odniesieniu do powołań sędziowskich, a następnie sprawowania wymiaru sprawiedliwości, w szczególności wobec hierarchicznej struktury sądownictwa, poszanowanie – w każdych okolicznościach – wartości przynależnych demokratycznym i praworządnym krajom.*

*Strona: http://www.medelnet.org*

*Kontakt : Filipe Marques (President) +351 964 886 536 / filipe.marques@medelnet.eu*



**Izjava za medije**

**ČETIRI EUROPSKE SUDAČKE ORGANIZACIJE TUŽE VIJEĆE EU ZBOG NEPOŠTIVANJA PRESUDA SUDA EU O ODLUCI O DEBLOKIRANJU SREDSTAVA POLJSKOJ**

Europa, 28. kolovoza 2022

Četiri glavne europske organizacije sudaca:

**Udruga europskih upravnih sudaca (AEAJ)**

**Europska udruga sudaca (EAJ, ogranak Međunarodne udruge sudaca - IAJ)**

**Rechters voor Rechters (Suci za suce)**

**Magistrats Européens pour la Démocratie et les Libertés (MEDEL)**

koju zastupa Carsten Zatschler SC, Emily Egan McGrath BL, odvjetnici, uz pomoć Anne Bateman i Maeve Delargy, odvjetnice, Philip Lee LLP,

podnijeli su danas pred Sudom pravde Europske unije (CJEU) tužbu protiv Vijeća EU-a zbog njegove odluke da deblokira fondove za oporavak i otpornost Poljske.

Tužba je zahtjev za poništenje u skladu s člankom 263. Ugovora o funkcioniranju Europske unije (TFEU) protiv Provedbene odluke Vijeća od 17. lipnja 2022., upućene Republici Poljskoj, usvojene na temelju Uredbe (EU) 2021/241 Europskog parlamenta i Vijeća od 12. veljače 2021. o uspostavljanju Instrumenta za oporavak i otpornost.

Svaka od četiri organizacije sudaca ima misiju braniti sudsku neovisnost i nepristranost sudaca svugdje u EU; tri od njih imaju članove (udruge) sudaca iz Poljske. Oni tvrde kako slijedi:

Vijeće EU-a odlučilo je deblokirati sredstva EU-a za Poljsku nakon što se ispune tri uvjeta: (1) Disciplinsko vijeće Vrhovnog suda morat će se raspustiti i zamijeniti neovisnim sudom; (2) mora se reformirati disciplinski režim; (3) suci na koje su utjecale odluke stegovnog vijeća imat će pravo na reviziju njihovih predmeta pred novim vijećem.

Četiri europske organizacije sudaca tvrde da se ovi uvjeti ne ispunjavaju što je potrebno za osiguranje učinkovite zaštite neovisnosti sudaca i pravosuđa te zanemaruju presude CJEU-a o tom pitanju.

Odluka Vijeća EU-a šteti položaju suspendiranih sudaca u Poljskoj: na primjer, CJEU je presudio da poljske suce pogođene nezakonitim disciplinskim postupcima treba odmah vratiti na posao, bez odgode ili postupka, dok bi treća prekretnica uvela postupak duži od godinu dana s neizvjesnim ishodom.

Ova odluka također šteti europskom pravosuđu u cjelini i položaju svakog pojedinog europskog suca. Svi suci svake pojedine države članice također su europski suci, koji moraju primjenjivati pravo EU-a, u sustavu koji se temelji na međusobnom povjerenju. Ako pravosuđe jedne ili više država članica više ne nudi jamstva neovisnosti i poštivanja temeljnih načela vladavine prava, nedvojbeno je pogođeno cijelo europsko pravosuđe (tzv. „učinak prelijevanja").

Razlog traženja poništenja odluke Vijeća EU je izričito načelo da se presude Suda Europske unije na temu neovisnosti pravosuđa trebaju izvršiti bez odgode i u cijelosti te da institucije EU ne mogu ni djelomično postupati nedosljedno s njima. ovom tužbom treba izričiti. Odluka Vijeća EU-a krši ovo načelo, jer ne postoji potpuna – tj. bezuvjetna – provedba presuda CJEU-a.

Cilj tužbe je uspostaviti gore navedeno načelo i spriječiti odluku Komisije o deblokadi EU fondova za Poljsku dok se presude CJEU-a ne izvrše u cijelosti.

Zahvaljujemo potpori koju pruža „The Good Lobby Profs".

**Udruga europskih upravnih sudaca (AEAJ**) osnovana je 2000. godine kao europska vrhunska udruga nacionalnih udruga upravnih sudaca i otvorena je za članstvo udruga (kao i pojedinačnih članova) svih zemalja koje su članice Vijeća Europa. Za sada obuhvaća članove 34 europske zemlje i predstavlja oko 6000 upravnih sudaca. Među ostalim, njegovi ciljevi nisu samo proširiti znanje i razmjenu o pitanjima od zajedničkog pravnog interesa među upravnim sucima u Europi, već i ojačati i promicati profesionalne interese upravnih sudaca, što uključuje obranu neovisnosti pravosuđa u svim njezinim različitim aspektima. .

Web stranica: http://www.aeaj.org

Kontakt: Edith Zeller (predsjednica) + 43 676 629 1840 / edith.zeller@vgw.wien.gv.at

**Međunarodna udruga sudaca (IAJ)** osnovana je u Salzburgu (Austrija) 1953. godine. To je profesionalna, nepolitička, međunarodna organizacija koja okuplja nacionalne udruge sudaca, a ne suce pojedince, odobrene od strane Središnjeg vijeća za prijem u Udrugu. Glavni cilj Udruge je očuvanje neovisnosti pravosuđa, što je bitan uvjet sudbene funkcije, jamče ljudska prava i slobode. Organizacija trenutno obuhvaća 94 takve nacionalne udruge ili reprezentativne skupine s pet kontinenata. IAJ ima četiri regionalne skupine: Europsko udruženje sudaca, Ibero-američku skupinu, Afričku skupinu, Azijsku, Sjevernoameričku i Oceanijsku skupinu. Svrha regionalnih grupa je raspravljanje o lokalnim problemima koji se tiču pravosuđa. Obično se sastaju dva puta godišnje i mogu donositi rezolucije o općim pitanjima koja utječu na pravosuđe cijelog dotičnog područja ili specifično u vezi s jednom ili više zemalja. Ad hoc misije i izvješća također se mogu organizirati u posebnim slučajevima.

Europska udruga sudaca (EAJ) najveći je dio IAJ-a koja ujedinjuje 48 sudačkih udruga po jednu iz svake europske države.

Međunarodno udruženje sudaca (IAJ)

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Europsko udruženje sudaca (EAJ)

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**Rechters voor Rechters (Suci za suce)** osnovana je 1999. godine kao neovisna i nepolitička zaklada koju su osnovali suci za potporu kolegama sucima u inozemstvu koji su zbog svoje profesionalne prakse naišli na probleme ili rizikuju probleme. Ti se problemi uglavnom odnose na (pretpostavljenu) povredu njihove profesionalne neovisnosti. J4J se također bavi sucima koji su otpušteni iz uznemirujućih razloga, koji su uhićeni i zatvarani, pod pritiskom, prijeti im se ili čak ubijeni.

Web stranica: http://www.rechtersvoorrechters.nl

Kontakt: Tamara Trotman (predsjednica) / info@rechtersvoorrechters.nl

**Magistrats Européens pour la Démocratie et les Libertés (MEDEL**), Europski suci za demokraciju i slobodu udruga je osnovana 1985. godine u Strasbourgu u Francuskoj, a okuplja 24 udruge sudaca i tužitelja iz 16 europskih zemalja, sve članice Vijeća Europe, koje predstavljaju ukupno oko 18.000 sudaca. Njegovi su ciljevi, između ostalog, uspostava zajedničke rasprave među sucima iz različitih zemalja radi potpore integraciji europske zajednice, s obzirom na stvaranje europske političke unije, obrana neovisnosti pravosuđa u odnosu na svaku drugu moć kao i specifičnih interesa, demokratizacija pravosuđa, u njegovom zapošljavanju iu uvjetima za obavljanje profesije, posebno u odnosu na hijerarhijsku organizaciju, i poštivanje, u svim okolnostima, pravnih vrijednosti specifičnih za demokratska država utemeljena na vladavini prava.

Web stranica: http://www.medelnet.org

Kontakt: Filipe Marques (predsjednik) +351 964 886 536 / filipe.marques@medelnet.eu

# ANAO

**2019**

- ANAO letter to the President of Mongolia

**2020**

- Author, "Judges on the March," The Collapse of Judicial Independence in Poland," Judicature International

**2021**

- ANAO statement on Afghanistan
- IAJ Statement on the Judicial Crisis in Lebanon
- Presentation on behalf of the International Institute of Justice Excellence to British Chief Justice Lady Justice Brenda Hale

**2022**

- Afghanistan: Speaking with One Voice
- Hosting ANAO Roundtable on Diversity on the Bench
  - Australian response
- Joint IAJ and IAWJ Statement on the Killing of Judges in Yemen

**2023**

- ANAO Statement on Sri Lanka



## 2019 ANAO letter to the President of Mongolia

INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI

PALAZZO DI GIUSTIZIA - PIAZZA CAVOUR - 00193 ROMA - ITALY

May 16, 2019

President Khaltmaagiin Battulga
President of Mongolia

Prime Minister Ukhnaagiin Khürelsükh
Prime Minister of Mongolia

Chairman Gombojaviin Zandanshatar
Chairman of the Parliament

Dear President Battulga, Prime Minister Khürelsükh, and Chairman Zandanshatar,

The IAJ has recently received information setting out matters of grave concern about the rule of law in Mongolia concerning recent measures taken to facilitate the dismissal of judges. The IAJ is deeply concerned about the suggestion that the rule of law and the independence of the judiciary is being weakened in Mongolia.

We have no doubt that you fully understand the importance of public confidence in an independent judiciary and the guarantee of the rule of law. We are concerned, however, that recent changes in Mongolia are substantially weakening the confidence which the people of Mongolia may have in the independence of the judiciary and in the rule of law. It is fundamental to a free and democratic country that its people have confidence that disputes are resolved independently from any outside interference and by reference to objective rules of law. The citizens of Mongolia need to feel confident that its judiciary is applying the rule of law and is independent from interference. Such confidence benefits both the people and the other institutions of government.

We ask that you take note of these concerns and take immediate steps to ensure that the rule of law is fully maintained and that the independence of the judiciary is fully guaranteed. It is essential that this be evident for all to see.

Yours faithfully,

The Hon. Allyson K. Duncan,
Member of the Presidency Committee, International Association of Judges
President of the Asian, North American and Oceanian Regional Group of the International Association of Judges

**2020 Author, "Judges on the March," The Collapse of Judicial Independence in Poland," Judicature International**


'THE MARCH OF THOUSAND GOWNS,' JANUARY 2021, WARSAW, POLAND: JUDGES FROM AROUND THE EU JOINED POLISH JUDGES IN PROTESTING LAW AND JUSTICE PARTY REFORMS THAT MANY BELIEVE THREATEN JUDICIAL INDEPENDENCE. ZUMA PRESS INC / ALAMY IMAGES.





# The Collapse of Judicial Independence in Poland: A Cautionary Tale

BY ALLYSON DUNCAN AND JOHN MACY

In late 2019, the Polish Sejm approved yet another law aimed at cabining the structure and function of the judiciary.[1] The new law, popularly referred to as a "muzzle" law,[2] empowers a disciplinary chamber to bring proceedings against judges for questioning the ruling party's platform.[3] The law allows the Polish government to fire judges, or cut their salaries, for speaking out against legislation aimed at the judiciary, or for questioning the legitimacy of new judicial appointees.[4] Although the law extends the government's disciplinary powers, disciplinary proceedings against judges are nothing new in Poland. Since Poland's disciplinary chamber was founded in 2017, over a thousand judges have been targeted.[5]

Put into context, the new law is merely the latest addition to a succession of judicial changes. Since its return to power in 2015, Poland's "Law and Justice" party has frequently targeted the independence of the judiciary. In doing so, the party has drawn the attention of the European Union ("EU"). EU bodies have warned the party that its judicial reforms contravene principles of judicial independence and could threaten the country's membership in the Union. The Polish leadership has consistently failed to heed these warnings. Indeed, the Law and Justice party's most recent enactment suggests that it is determined to continue with its agenda. The EU is therefore faced with the challenge of how to respond to Poland's apparent intransigence.

Here we examine the impact of Poland's latest law on judicial discipline, as well as the implications of Poland's challenges to judicial independence generally. The paper proceeds in three parts: First, it contextualizes Poland's new law against the country's broader judicial revisions; second, it examines the tension created by these actions with the EU; and third, it considers whether there are lessons to be learned from the Polish experience in seeking to understand and protect judicial independence in a country like the United States.

**Since Poland's disciplinary chamber was founded in 2017, over a thousand judges have been targeted.**

## HOW DID WE GET HERE? THE COLLAPSE OF JUDICIAL INDEPENDENCE IN POLAND

The so-called "muzzle" law on judicial discipline fits into a political process that spans several years. Since 2015, the "Law and Justice" party (Prawo i Sprawiedliwość, or PiS) has targeted Poland's judicial branch with laws designed to mitigate the ability of the courts to act as a check against legislative and executive power. It has done so in various ways. It has imposed procedural rules that paralyze courts, packed courts with PiS-friendly appointees, and, in some cases, refused to follow or publish official opinions.

The changes to Poland's Constitutional Tribunal, the court vested with the power of judicial review,[6] are just one example. Not long after its transition to power, the PiS-controlled Sejm (lower house of parliament) refused to recognize Tribunal judges appointed by the outgoing regime,[7] and instead replaced the previously appointed judges with their own "midnight appointees."[8] Then, in December 2015, the Sejm passed an act imposing new procedural rules on the Tribunal.[9] The act increased the number of judges needed for the court to hear a case, and mandated a two-thirds supermajority voting requirement for the court to decide an issue.[10]

In response, incumbent judges on the Constitutional Tribunal released ▸

an opinion questioning the constitutionality of the act.[11] They pointed out that, among other problems, the act contradicted the simple majority voting requirement mandated by Poland's constitution.[12] However, the ruling party maintained that the act was effective immediately.[13] As such, the party argued that the Tribunal was required to follow the procedural rules of the act to overturn the act itself. In effect, the legislation was designed to evade judicial review. Ultimately, the PiS officials simply refused to publish the court's opinion.[14]

The reforms of the Constitutional Tribunal were an early demonstration of the PiS party's approach to the rule of law, and a troubling indication of its proclivity to evade checks on the party's power. Equally troubling was the party's willingness to do an about-face once its reforms were implemented. Once the Constitutional Tribunal had been packed with enough PiS-friendly judges, the PiS Minister of Justice threatened disciplinary sanction against any judge who refused to recognize the legitimacy of the newly constituted Tribunal.[15] The "muzzle" law follows a similar line. Before telling that story, though, it is important to note the changes made to two other institutions: Poland's National Council of the Judiciary and the Polish Supreme Court.

In Poland, judicial appointments, including appointments to the Supreme Court, are largely handled by a facially independent body, the National Council of the Judiciary (KRS).[16] The Council is composed of 25 members: 15 judges from Poland's various courts, four members of the Sejm appointed by the Sejm, two members appointed by the Senate, the President of the Supreme Court, the President of the Supreme Administrative Court, the Minister of Justice, and one member appointed by the President of the Republic.[17] Initially, the 15 judges sitting on the KRS were appointed from within the judiciary by various judicial assemblies.[18] However, in 2017, President Andrzej Duda enacted legislation that gave the Sejm the authority to appoint the judicial members of the council.[19] The legislation also immediately ended the terms of the council's sitting judges,[20] allowing the Sejm to quickly replace 15 members of the body with its own appointees.[21] As a result, the Sejm had effectively taken control of judicial appointments in Poland. The action was met with sharp criticism, and the KRS was subsequently suspended from the European Network of Councils for the Judiciary (ENCJ) as a result.[22] In light of recent events, the KRS is in danger of being officially expelled from the ENCJ.[23]

**The party argued that the Tribunal was required to follow the procedural rules of the act to overturn the act itself. In effect, the legislation was designed to evade judicial review.**

Following the reshaping of the KRS, the Sejm lowered the mandatory retirement age of sitting Supreme Court judges.[24] Had it been allowed to stand, the move would have enabled the new KRS to appoint as many PiS-loyal judges as possible as older members were forced to retire from the court. In effect, the new retirement age would have allowed the KRS to replace roughly 40 percent of the judges on Poland's Supreme Court.[25] However, Poland walked back the action after the European Court of Justice released an opinion criticizing the change as contrary to EU principles of judicial independence.[26] Even so, the PiS-friendly KRS has still had ample opportunity to appoint new judges to Poland's court of last resort. Sitting Supreme Court judges have been critical of the new appointees, and some have refused to recognize the legitimacy of the new judges.[27] Poland's latest disciplinary or "muzzle" law was passed in large part to silence these critical voices.[28] The weaponization of the disciplinary sanction has been an integral part of PiS reform.

In Poland, disciplinary sanction of judges is handled by the disciplinary chamber, an institution created by the PiS in 2017.[29] The chamber is led by prosecutors appointed by the Minister of Justice, who is a PiS appointee.[30] The institution has been criticized as a tool designed to "ensure that judges [are] subservient to the political will."[31] In a recent report, a group of Polish judges highlighted the repressive activities of the chamber. The report describes





instances of judges being prosecuted for engaging in allegedly political activities, such as chairing a meeting where judicial independence is discussed.[32] In other cases, judges were prosecuted for referring questions to the European Court of Justice, an action referred to as "judicial excess" by the prosecutors.[33]

Under the new "muzzle" law, the disciplinary chamber may impose salary cuts, or even outright dismissal, if judges speak out against the validity of the judicial restructuring.[34] Judges can also be punished for questioning the legitimacy of judges appointed by the KRS,[35] an institution that has been thoroughly captured by PiS appointees. The law also requires judges to disclose their memberships in associations, including associations of judges.[36] The law seeks to chill discourse between judges regarding reforms, and to dissuade judges from joining judicial associations that have been critical of PiS legislation. Indeed, it was a former president of Poland's Supreme Court who aptly described the law as a "muzzle" law.[37]

Through its reforms, the Law and Justice party has demonstrated a profound disrespect for judicial independence and the separation of powers. Moreover, it should be noted that PiS has waged an ideological public-relations battle against the judiciary in addition to its legislative assault. The party spins a narrative that identifies the judiciary with the bygone communist regime,[38] seeking to paint the judiciary as a "judiocracy"[39] of old communist elites that are bent on disregarding legislation.[40] At its core, the PiS's rhetoric seeks to classify the judiciary as an impediment to democratic rule by the people, rather than a constitutionally mandated check on legislative and executive overreach.[41] Of course, the end goal of the rhetoric is to justify the use of executive and legislative power unfettered by judicial review.

The party has thus used social media and advertising to discredit judges and undermine public confidence in the judiciary. In 2017, the party launched an ad campaign that described instances of judges drunk driving, shoplifting, and starting bar fights.[42] In 2019, Polish journalists exposed an online "trolling" campaign being organized within Poland's Ministry of Justice.[43] The campaign hired professional trolls to harass and discredit judges on social media platforms such as Twitter.[44] In one instance, a professional troll sent defamatory information about a judge to all of the judge's colleagues, and even to the judge himself at his home address.[45]

The objective of the rhetoric is relatively clear: The PiS party seeks to justify its consolidation of power by sowing public distrust of the judicial branch. The strategy is a tried-and-true autocratic formula: a democratically elected body attacks constitutional institutions under the guise of a democratic mandate.[46] However, as a member of the EU, Poland is subject to democratic institutions outside of its borders. It is unsurprising, then, that the PiS has accompanied its skepticism of the Polish Constitution with a skepticism of the EU and its federal system of law. The party has been reluctant to conform to established EU values, and it has actively punished judges for referring questions to European Courts.[47]

## THE EU RESPONSE

In response, EU bodies have wrestled with Poland. An independent judiciary is one of the foundational principles of the EU. As Article 6 of the European Convention on Human Rights states: "[E]veryone is entitled to a fair and public hearing within a reasonable time by *an independent and impartial tribunal* established by law"[48] (emphasis ours). This broad principle serves only as a starting point. In its official opinion on judicial independence, the Consultative Council of European Judges (CCJE) has described an independent judiciary as a "pre-requisite to the rule of law."[49] Among other things, the CCJE recommends that judges be appointed by an independent body based on objective criteria, that they have guaranteed tenure subject to limited disciplinary sanction, and that they have salaries protected from reduction.[50] More recently, the European Commission on Democracy through Law (the "Venice Commission") has reaffirmed the principles of independence described by the CCJE.[51] The Venice Commission's 2010 report on judicial independence frequently cites the CCJE opinion, and emphasizes the importance of objective appointment and guaranteed tenure and salary.[52]

While judicial independence is important as a democratic ideal, it also plays a significant practical role in the EU. Under Article 19(1) of the Treaty on EU, the EU requires its member states to "provide remedies sufficient to ensure effective legal protection in the fields covered by Union law."[53] Additionally, the European Court of Justice relies upon the tribunals of member states to request rulings from the court.[54] As such, the judiciaries of member states play an important role in the enforcement of EU law. In a recent decision, the European Court of Justice concluded that judicial independence is "essential" to this cooperative system.[55] In its opinion, the court offered its own succinct interpretation of what judicial independence entails. It wrote:

> The concept of independence presupposes, in particular, that ▸

the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions.[56]

It is not difficult to see how the judicial reforms in Poland have contravened these principles. By replacing the members of the National Council of the Judiciary, the PiS Sejm has undermined the independence of the body charged with judicial appointments. By creating a disciplinary chamber with the power to remove judges or reduce their salaries, the PiS Sejm has imposed "pressure liable to impair the independent judgment" of Polish judges.

In 2016, the European Commission began releasing official recommendations outlining concrete steps that Poland should take to restore the rule of law there.[57] The latest recommendation, released in 2017, asked the Polish government to walk back several of the reforms.[58] However, the European Commission noted that the recommendation followed nearly two years of Poland's failure to respond to its attempts at dialogue.[59] Due to Poland's lack of cooperation, the Commission also used the 2017 recommendation as an opportunity to initiate more drastic measures under Article 7(1) of the Treaty on EU.[60] Article 7 allows the Council of the EU to determine that there is a "clear risk of serious breach" of EU values by a member state.[61] If such a determination is made, Poland could lose their voting rights within the Council.[62] However, an official Article 7 determination requires unanimous support from the rest of the EU,[63] and some countries (namely Hungary) are reluctant to act against Poland.[64]

Unperturbed by the EU's threats, the Polish government has continued to stand behind its agenda. In 2018, the Polish government released a 94-page white paper defending the validity of its judicial reforms.[65] Not long after, members of the Polish Supreme Court criticized the white paper for containing "untrue" and "distorted" information.[66] The Court described the white paper's analysis as methodologically inconsistent, unreasonable, and tendentious.[67] Despite this critique, the Law and Justice Party remained entrenched in its position. The recent "muzzle" law, approved in 2019, is further evidence of the party's intransigence.

Poland's defiance has escalated tensions with the EU, and this new disciplinary law has become a focal point. In early 2020, the European Court of Justice ("CJEU") released an interim decision ordering the Polish government to suspend the activities of the disciplinary chamber regarding the discipline of judges.[68] In its decision, the CJEU concluded that the disciplinary chamber in its current form "may cause serious and irreparable harm with regard to the functioning of the EU legal order."[69] As a result, the court found the situation sufficiently urgent to order interim measures suspending the chamber's activities while it considers its ultimate disposition regarding the "muzzle" law. The court will come to its final decision in the case at a later date.[70]

It is difficult to predict how Poland will react to the increasing international pressure. Shortly after the CJEU ordered the suspension of the disciplinary chamber, the chamber continued with proceedings against a prominent Warsaw judge, Judge Igor Tuleya.[71] The president of the Polish Supreme Court at the time (and former PiS official),[72] Aleksander Stępkowski, defended the proceeding by claiming that it was a criminal matter, not a disciplinary matter,[73] and therefore not covered by the CJEU opinion. The concern was that the disciplinary chamber would attempt to circumvent the CJEU order by reframing its proceedings. Ultimately, however, in a somewhat unexpected turn, the disciplinary chamber bowed to international pressure and dropped the proceeding.[74] This is not the first time the PiS party has changed course in response to international pressure; as discussed above, the party walked back a reform lowering retirement ages in response to EU criticism.[75]

That being said, a few instances of backpedaling, of course, may not mean a broader change of heart. The PiS party continued with reforms after reinstating the retirement age, and it may continue with reforms again after abandoning the proceedings against Judge Tuleya. It is important, then, to ensure that small capitulations do not excuse Poland from the international hot seat.

What, then, will the EU do next? The answer is unclear. One option is to continue Article 7 proceedings in an attempt to strip Poland of its voting rights in the EU Council. However, that path would be procedurally difficult. Under Article 7, the European Council must act unanimously to determine that there is a clear risk of serious breach of EU values.[76] The Council may struggle to achieve a unanimous vote. In the past, Hungary has expressed a willingness to defend Poland;[77] to quote Hungarian Prime Minister Viktor Orban: "the Inquisition offensive against Poland can never succeed because Hungary will use all legal options in the EU to show solidarity with the Poles."[78] Orban's position is not surprising, as his own party has orchestrated the deterioration of democratic institutions in Hungary.[79] Nonetheless, the European Parliament's Committee on Civil Liberties, Justice, and Home Affairs (LIBE) continues to push for Article 7 proceedings.[80] Whether such proceedings can succeed remains to be seen.

As an alternative, some EU members are advocating for direct monetary sanctions. Denmark, for example, has advocated for the EU's 2021–2027 budget to include a link between EU funds and rule of law standards.[81] The proposal would reduce EU funding to countries that fail to meet the Union's expectations for democratic institutions. The LIBE has similarly advocated for the use of "budgetary tools" in addressing Poland's breach of EU values.[82] Considering the procedural hurdles involved in Article 7 proceedings, financial sanction is likely a more efficient way for the EU to exert pressure on Poland's government. Undoubtedly, exerting financial pressure would be a bold move by the EU, but it is appropriate for members who continue to accept funds while simultaneously flouting the bloc's core principles.

In addition to actions taken by the EU as a whole, member states have pushed back against Poland in their individual capacities. In recent years, several nations have refused to honor European arrest warrants which, under normal circumstances, would require them to extradite suspected criminals to Poland. In 2018, for example, an Irish judge refused to extradite a suspected drug trafficker,[83] explaining that the rule of law in Poland had been "systematically damaged" by Law and Justice reforms.[84] In an official order, the judge concluded that "[r]espect for the rule of law is essential for mutual trust in the operation of the European arrest warrant."[85] The EU Court of Justice agreed; in a 2018 ruling, the CJEU concluded that "[a] judicial authority called upon to execute a European arrest warrant must refrain from giving effect to it if it considers that there is a real risk that the individual concerned would suffer a breach of his fundamental right to an independent tribunal."[86] In 2020, a German court followed this reasoning in its own refusal to extradite a suspect.[87] In a press conference, the court expressed that it had "profound doubts about the future independence of the Polish judiciary."[88]

These are only a few examples of ways that the EU and its members can apply external pressure on Poland. Since existing measures have failed to slow the deterioration of Poland's institutions, it is likely that the EU will look for new avenues to force the issue. In doing so, the bloc will need to remain vigilant in its struggle with a Polish government that has consistently refused to conform to Union standards.

**The Law and Justice reforms demonstrate that a constitutional order that lacks respect for an independent judiciary is apt to betray its own constitution.**

## LESSONS FOR THE UNITED STATES

It is understandably difficult to compare the situation in Poland to the United States. The United States has relatively strong judicial institutions, and its norms of judicial independence have developed over centuries of American history. By contrast, those norms are young in Poland. Poland's Constitution did not contain practical protections for judicial independence until 1989.[89] The country's current Constitution, ratified in 1997, contains extensive safeguards for judicial independence,[90] but the fact remains that those safeguards are relatively new.

Notwithstanding the differences, there are concrete lessons to be learned from Poland's political crisis. Speaking broadly, the Law and Justice reforms demonstrate that a constitutional order that lacks respect for an independent judiciary is apt to betray its own constitution. Although our situation is not nearly as drastic, a growing tendency to politicize the judiciary is of legitimate concern in the United States. Furthermore, the EU's struggle with Poland highlights that a federal system of law depends upon the good faith cooperation of its members. As such, we are reminded that norms of judicial independence in the United States are crucial at both the federal and the state levels.

### *At the Federal Level*

When discussing the politicization of the federal judiciary, it is tempting to focus on the judicial confirmation process. Indeed, the process has under- ▸

gone several political changes in recent years. Blue slips are given less deference,[91] and the Senate has twice exercised the "nuclear option" to lower the threshold needed to invoke cloture on judicial confirmations.[92] However, political battles during the confirmation process are not a new phenomenon.[93] In a recent article, constitutional law professor Josh Chafetz characterizes the history of legislative obstruction:

> Broadly speaking, minorities look for procedural tools — things like mechanisms of quorum-counting or the lack of a formal procedural mechanism to bring a debate to a close — that they can employ to thwart or delay the majority's agenda. When the obstruction becomes pervasive enough that the majority, over an extended period of time, find it intolerable, the obstructive tactics are restricted or eliminated.[94]

According to Chafetz, recent developments, such as reducing deference to home-state Senators or using the "nuclear option," fit well into this broader historical narrative.[95]

As such, the politicization of the confirmation process should not be that surprising. What might be more concerning, though, is the increasing political skepticism regarding judicial independence. A few recent examples illustrate this shifting political narrative. In 2018, President Donald Trump posted a tweet referring to a federal judge as an "Obama judge" following a ruling that Trump found unfavorable.[96] The implication, of course, was that the judge's decision was influenced by his political ideology, an ideology only confirmed by the fact that he was appointed by President Barack Obama. More recently, in 2020, Senate Minority Leader Chuck Schumer threatened that Justices Neil Gorsuch and Brett Kavanaugh would "pay the price" if they came to a particular conclusion in a pending Supreme Court case.[97] The threat implied that judges, like political actors, should be subject to democratic pressure to make the "right" decision.

While not as overt, both instances have an alarming similarity to the narratives spun by the Law and Justice party. The remarks suggest a world view of judges not as neutral decision-makers, but rather as politically motivated actors working against the democratic will. When judges are seen as politically motivated, it might seem more acceptable to disregard an opinion as the policy determinations of an "Obama judge" as opposed to a good-faith determination of the rule of law. Likewise, it might seem more acceptable to threaten judges over their decisions, just as the public threatens elected politicians with the withdrawal of their vote. When judges are seen as just another political actor, judicial independence is apt to be seen as an impediment to, and not a protector of, the rule of law.

The judicial community has taken note of the narrative of distrust. In a response to President Trump, Chief Justice John Roberts wrote: "We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for."[98] In a statement responding to Sen. Schumer, the Chief Justice remarked that "[s]tatements of this sort from the highest levels of government are not only inappropriate, they are dangerous."[99]

In early 2020, the Committee on Codes of Conduct released an advisory opinion cautioning judges to carefully consider memberships in the American Constitution Society or the Federalist Society.[100] The opinion emphasized that it was not condemning those organizations or their activities.[101] Rather, the opinion noted that "[a] reasonable and informed public would view judges holding membership in these organizations to hold, advocate, and serve liberal or conservative interests."[102] The advisory opinion was met with significant pushback,[103] and was eventually withdrawn.[104] Notwithstanding its alleged flaws, the advisory opinion, like the Chief Justice's remarks, demonstrated an apprehension of the consequences of political narrative.

When the public begins to question the impartiality of judges, it becomes easier to justify reforms to the judiciary. The official Code of Conduct for federal judges recognizes this explicitly in the commentary to Canon 1. The Commentary states: "[d]eference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges."[105] When that public confidence deteriorates, our politicians feel more confident in dismissing the decisions of judges as impartial, or in threatening consequences when judges step out of line. For now, those threats might be empty, but Poland's political situation demonstrates that such threats can materialize.

However, it would be a mistake to think that judges are wholly responsible for this narrative. While judges can play their part in sustaining public confidence in the judiciary, there is little they can do against a government bent on cementing its own power. The Law and Justice party wants the public to believe that it is seeking to overthrow an artifact of the communist era.[106] In such a scenario, the government itself is playing an active role in undermining public confidence in the judiciary. And, in some cases, there is little that judges can do to fight back. Even now, there is a fear that the Law and Justice party is willing to evade democratic accountability as well.[107] The collapse of judicial independence is only one part of the story. Regardless, the rhetoric in Poland can cast light on the dangerous implications of the rhetoric stirring in the United States.

***At the State Level***

As discussed above, Poland's reforms have triggered responses not only from EU bodies, but also from individual EU members. Some EU members have refused to extradite criminal suspects to Poland because of their lack of faith in the country's justice system. Those instances reveal an important consequence of Poland's attack on the judiciary. In federal systems with highly mobile populations, member states rely on each other for the administration of justice. There cannot be a coherent and consistent rule of law throughout unless all members stand behind basic principles of law. This is apparent in the United States as well, where the vast majority of criminal and civil cases are resolved in the state courts.[108] Just as the legal order in the EU depends upon the cooperation of member states, the maintenance of a reliable legal order in the United States depends upon the integrity of state judiciaries.

Certainly, politicization of the judiciary takes on a different form in the state courts. One difference derives from the varying methods of judicial selection. Some states have fully elected judiciaries; other states have appointments for limited tenure; and others have appointments subject to retention elections.[109] In each case, what counts as "politicization" can be assessed differently. In states with fully elected judiciaries, for example, judges take part in an explicit political process. However, even an elected judiciary can still become "politicized" in a way that threatens judicial independence. As a former justice of the Oregon Supreme Court pointed out, judicial elections become politicized when discussions of policy outcomes dominate the election process.[110] This kind of electoral politicization is only made worse by special interest groups, which see judicial elections as another avenue to finance campaigns and exert their policy preferences.[111] In response to this, some states with elected judiciaries have special rules that apply only to judicial elections. In Oregon, for example, candidates for judicial office are prohibited from soliciting campaign contributions directly.[112]

**When public confidence deteriorates, our politicians feel more confident in dismissing the decisions of judges as impartial, or in threatening consequences when judges step out of line.**

Regardless of the process by which a state selects its judges, judicial independence can always be threatened by pressure from the executive and legislative branches. The fight for impartiality in the selection process is futile if sitting judges can be disciplined for unfavorable rulings. It should be concerning, then, that some state judiciaries have come under direct attack from the other branches. One recent example comes from the state of Alaska, where the governor used his line-item veto power to cut the state judiciary budget in response to an opinion of the Supreme Court.[113] In a note accompanying the veto, the governor offered the following explanation: "The Legislative and Executive Branch are opposed to State funded elective abortions; the only branch of government that insists on State funded elective abortions is the Supreme Court."[114] Although such a veto is not directly analogous to the actions of Poland's disciplinary chamber, it has similar implications. A retaliatory budget reduction seeks to punish judges for the policy consequences of a legal conclusion, and such punishment is inconsistent with basic values of judicial independence.[115]

State-level transgressions against judicial independence demonstrate the necessity of strong political norms. The United States does not have a procedure similar to the EU's Article 7. The United States cannot, for example, deprive a state of its equal suffrage in the Senate without the state's consent.[116] That said, avenues for redress ▸

do exist in the states themselves. States can enact legislative safeguards against the politicization of their judiciaries, and courts can push back against the intrusion of the executive and legislative branches when a case highlights such issues.[117] However, the success of each of these avenues relies on public confidence in the integrity of the judiciary. As the Law and Justice reforms demonstrate, courts are practically powerless to push back against judicial reforms when those reforms are based on a disrespect for judicial institutions in the first place.

The EU, like the United States, is built on the aspiration of a unified rule of law that reflects certain fundamental values. Undoubtedly, a unified rule of law requires mutual trust between judiciaries, founded upon reciprocal minimum standards.[118] This reciprocity and trust is undermined when the political actors of a state cause the judicial branch to fall below the threshold of judicial independence. The struggle between Poland and the EU teaches an important lesson about the fragility of a unified rule of law. Both the European and American visions of justice rely upon the integrity of several judiciaries; when just one judiciary is compromised, the entire unified system is jeopardized.

## CONCLUSION

The crisis in Poland emphasizes both the importance and the fragility of the judicial branch. In democratic nations like Poland and the United States, the judiciary falls into somewhat of a paradox. Judges serve as a crucial check on the executive and legislative branches, and yet they rely, to an extent, on the respect of those branches to retain their independence. Nonetheless, while Poland's story may be a "cautionary tale," it can also be seen as a tale of hope as well. While the Law and Justice party has undermined the integrity of the justice system in Poland, advocates of an independent judiciary have refused to back down. The ruling party faces opponents from within Poland's borders and from without. The backlash that the party has received shows that the third branch still has plenty of supporters in Poland and throughout Europe. Likewise, there are still many in the United States who see an independent judiciary as "something we should all be thankful for."[119]

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1 *See* Jan Strupczewski, *Poland lower house adopts judiciary reform despite EU concerns*, Reuters (Dec. 20, 2019), https://www.reuters.com/article/us-poland-eu-judges/poland-lower-house-adopts-judiciary-reform-despite-eu-concerns-idUSKBN1YO28G.

2 Nicolé M. Ford, *'Muzzle Law' Ends Poland's Ability to Call Itself a Democracy*, Globe Post (Jan. 30, 2020), https://theglobepost.com/2020/01/30/poland-muzzle-law/.

3 Freedom House, *Poland: Restrictive Judiciary Law Sets Dangerous Precedent*, (Jan 23, 2020), https://freedomhouse.org/article/poland-restrictive-judiciary-law-sets-dangerous-precedent.

4 *Id.*

5 According to a January 2020 report, 1,174 disciplinary investigations have been initiated against Polish judges; approximately 10% of Poland's judges have been investigated. CoE/PACE, *The functioning of democratic institutions in Poland*, 25 (Jan. 2020).

6 Const. of the Republic of Poland., art. 188(1).

7 *See* Arkadiusz Radwan, *Chess-boxing around the Rule of Law: Polish Constitutionalism at Trial*, Verfassungsblog (Dec. 23, 2015), https://verfassungsblog.de/chess-boxing-around-the-rule-of-law-polish-constitutionalism-at-trial/.

8 *Id.*

9 Mikołaj Pietrzak, *The Constitutional Court of Poland: The Battle for Judicial Independence*, page 4, The Foundation for Law, Justice and Society (May 24, 2017), https://www.fljs.org/content/constitutional-court-poland-battle-judicial-independence.

10 *Id*.

11 Paulina Starski, *The Power of the Rule of Law: The Polish Constitutional Tribunal's Forceful Reaction*, Verfassungsblog (Mar. 17, 2016), https://verfassungsblog.de/the-power-of-the-rule-of-law-the-polish-constitutional-tribunals-forceful-reaction/.

12 Const. of the Republic of Poland, Art. 190(5).

13 Radwan, *supra* note 7.

14 Starski, *supra* note 11.

15 Tomasz Tadeusz Koncewicz, *Living under the constitutional capture and hoping for the constitutional recapture*, Verfassungsblog (Jan. 3, 2017), https://verfassungsblog.de/living-under-the-the-un-constitutional-capture-and-hoping-for-the-constitutional-recapture/.

16 Christian Davies, *Hostile Takeover: How Law and Justice Captured Poland's Courts*, Freedom House (2018), https://freedomhouse.org/report/analytical-brief/2018/hostile-takeover-how-law-and-justice-captured-polands-courts.

17 Const. of the Republic of Poland, Art. 187.

18 OSCE Office for Democratic Institutions and Human Rights, *Final Opinion on Draft Amendments to the Act on the National Council of the Judiciary and Certain Other Acts of Poland*, page 11 (May 5, 2017) https://www.osce.org/files/f/documents/f/c/315946.pdf

19 Alistair Walsh, *What are Poland's controversial judicial reforms?*, DW (Nov. 5, 2019), https://www.dw.com/en/what-are-polands-controversial-judicial-reforms/a-51121696.

20 *Id*.

21 *Id*.





22 *Id*.

23 *See* generally European Network of Councils for the Judiciary, *Draft Position Paper of the Executive Board of the ENCJ on the Membership of the KRS (expulsion)*, (Apr. 22, 2020) (explaining the ENCJ's position on expelling the KRS from the ENCJ).

24 Davies, *supra* note 17.

25 *Id*.

26 EU Court says Poland broke law by making judges retire early, DW (Jun. 24, 2019), https://www.dw.com/en/eu-court-says-poland-broke-law-by-making-judges-retire-early/a-49332774; C-192/18, *Commission v. Poland*, 2019 ECLI:EU:C:2019:529.

27 Cain Burdeau, *Fight Over Rule of Law in Poland Intensifies*, Courthouse News Service (Jan. 24, 2020), https://www.courthousenews.com/fight-over-rule-of-law-in-poland-intensifies/

28 *Id*.

29 *See* C-791/19, *Commission v. Poland*, 2020 ECLI:EU:C:2020:277 (stating that the disciplinary chamber was created by legislation in 2017).

30 Jakub Kościerzyński et al., Justice Under Pressure: repressions as a means of attempting to take control over the judiciary and the prosecution in Poland: Years 2015–2019 at 7 (2019).

31 *Id*.

32 *Id*. at 17.

33 *Id*. at 33.

34 Burdeau, *supra* note 28.

35 Adam Easton, *Poland lower house approves controversial judges law*, BBC (Dec. 20, 2019), https://www.bbc.com/news/world-europe-50874320.

36 Anne Sanders, *Muzzling Associations of Judges: The Duty of Judges to Declare Membership in an Association Under Poland's so-called "Muzzle Law,"* Verfassungsblog (Mar. 5, 2020), https://verfassungsblog.de/muzzling-associations-of-judges/.

37 Ford, *supra* note 2.

38 *See* Michael Hoffman, *[PiS]sing off the Courts: The PiS Party's Effect on Judicial Independence in Poland*, 51 Vand. J. Transnat. 1153, 1163 (2018) (describing PiS rhetoric that identifies judges as an "older generation of elites" affiliated with an old communist order).

39 *See Poland approves bill aimed at aimed at punishing judges*, France24 (Dec. 20, 2019), https://www.france24.com/en/20191220-poland-approves-bill-aimed-at-punishing-judges (quoting Justice Minister Zbigniew Ziobro: "'This law protects the democratic rule of law against the 'judiocracy'. . .").

40 *See* Davies, *supra* note 17 (stating that "PiS claims the right to disregard the provisions of the constitution so as to assert its control over the judiciary, which, it argues, has no right interfering with the people's will.").

41 *Id*.

42 Davies, *supra* note 17; Marek Strzelecki, *Poland Starts Ad Campaign to Back Court Overhaul Disputed in EU*, Bloomberg (Sep. 8, 2017), https://www.bloomberg.com/news/articles/2017-09-08/poland-starts-ad-campaign-to-back-court-overhaul-disputed-in-eu.

43 Anne Applebaum, *The Disturbing Campaign Against Poland's Judges*, The Atlantic (Jan. 28, 2020), https://www.theatlantic.com/ideas/archive/2020/01/disturbing-campaign-against-polish-judges/605623/.

44 *Id*.

45 *Id*.

46 *See* generally Kim Lane Scheppele, *Autocratic Legalism*, 85 U. Chi. L. Rev. 545, 545–549 (2018) (describing the formulaic approach of new autocratic governments).

47 Kościerzyński, *supra* note 31.

48 European Convention on Human Rights, art. 6, Sept. 3, 1953.

49 Consultative Council of European Judges, Opinion No. 1 Concerning the Independence of the Judiciary, para. 10, (2001).

50 *Id*.

51 European Commission on Democracy through Law, Report on the Independence of the Judicial System Part I: The Independence of Judges 4–5, (Mar. 12, 2010).

52 *Id*.

53 Treaty on European Union, Art. 19(1).

54 Treaty on the Functioning of the European Union, Art. 267.

55 C-64/16, Associação Sindical dos Juízes Portugueses v Tribunal de Contas, 2018 ECLI:EU:C:2018:117.

56 *Id*.

57 *Rule of Law: European Commission acts to defend judicial independence in Poland*, European Commission (Dec. 20, 2017), https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5367

58 *Id*.

59 *Id*.

60 *Id*.

61 Treaty on European Union, art. 7(1), Feb. 7, 1992.

62 *Id*., art. 7(3).

63 *Id*., art. 7(2).

64 *See* Hoffman, *supra* note 39 at 1180 ("Hungary steadfastly refuses to vote in favor of any punishments against Poland.")

65 Davies, *supra* note 17.

66 *Opinion on the White Paper on the Reform of the Polish Judiciary*, Supreme Court of the Republic of Poland (Mar. 16, 2018), https://archiwumosiatynskiego.pl/images/2018/04/Supreme-Court-Opinion-on-the-white-paper-on-the-Reform-of-the-Polish-Judiciary.pdf

67 *Id*.

68 C-791/19, *Commission v. Poland*, 2020 ECLI:EU:C:2020:277.

69 *Id*.

70 *Id*.

71 Marcin Jabłoński, *Stępkowski: The case of the Judge Tuleya's immunity is not covered by the CJEU decision*, Rule of Law (May 28, 2020), https://ruleoflaw.pl/stepkowski-the-case-of-the-judge-tuleyas-immunity-is-not-covered-by-the-cjeus-decision/.

72 *New "commissioner" in the Supreme Court: Aleksander Stępkowski*, Rule of Law (May 15, 2020), https://ruleoflaw.pl/new-commissioner-in-the-supreme-court-aleksander-stepkowski/.

73 Jabłoński, *supra* note 72.

74 Claudia Ciobanu, *Polish Courts: Independent Judiciary Wins Battle, Not War*, Reporting Democracy (Jun. 11, 2020), https://balkaninsight.com/2020/06/11/polish-courts-independent-judiciary-wins-battle-not-war/.

75 *Supra* note 27.

76 Treaty on European Union, Article 7(2).

77 *See* Hoffman, *supra* note 39 at 1180 ("Hungary steadfastly refuses to vote in favor of any punishments against Poland.").

78 Marton Dunai, *Hungarian PM offers support to Poland in row with EU*, Reuters (Jul. 22, 2017), https://www.reuters.com/article/us-poland-politics-judiciary-hungary/hungarian-pm-offers-support-to-poland-in-row-with-eu-idUSKBN1A70C1.

79 For a concise overview of Orban's assault on democratic institutions in Hungary, *see* Kim Lane Scheppele, *Autocratic Legalism*, 85 U. Chi. L. Rev. 545, 549–550 (2018).

80 Committee on Civil Liberties, Justice, and Home Affairs, *Draft Interim Report on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law* 17–18, European Parliament (May 15, 2020), https://www.europarl.europa.eu/doceo/document/LIBE-PR-650665_EN.pdf.

81 Ayee Macaraig, *Denmark wants EU funds linked to the rule of law*, CPH Post (Jun. 12, 2020), http://cphpost.dk/?p=114740.

82 *Supra* note 81 at 15.

83 Christian Davies, *Ireland refuses extradition over concern at Polish justice reforms*, The Guardian (Mar. 13, 2018), https://www.theguardian.com/world/2018/mar/13/ireland-refuses-arthur-celmer-extradition-poland-justice-reforms-ecj#.

84 *Id*.

85 High Court of Ireland, *Minister for Justice and Equality v. Celmer* (No. 1), [2018] IEHC 119. This ruling was eventually overruled, and extradition was ordered. *See* Mary Carolan, *Extradition ordered of Polish man in controversial landmark case*, Irish Times (Nov. 12, 2019), https://www.irishtimes.com/news/crime-and-law/courts/supreme-court/extradition-ordered-of-polish-man-in-controversial-landmark-case-1.4080428.

86 Court of Justice of the European, Press Release No 113/18: Judgment in Case C-216/18 PPU (July 25, 2018), https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-07/cp180113en.pdf.

87 Anna Wójcik, *Muzzle Law leads German court to refuse extradition of a Pole to Poland under the European Arrest Warrant*, Rule of Law (Mar. 6, 2020), https://ruleoflaw.pl/muzzle-act-leads-german-to-refuse-extradition-of-a-pole-to-poland-under-the-european-arrest-warrant/.

88 Jasmin Bauomy, *Germany refuses to extradite Pole under European arrest warrant due to fair trial fears*, Euronews (Mar. 10, 2020), https://www.euronews.com/2020/03/09/germany-refuses-to-extradite-pole-under-european-arrest-warrant-due-to-fair-trial-fears.

89 *See* Elzbieta Morawska, *Judicial Independence in Poland: From the 1952 Constitution to the 1989 Reforms*, 1 CJIL Y.B. 87, 88–90 (1992) (describing the lack of protection for judicial independence in Poland's Constitution prior to 1989).

90 *See generally* Const. of the Republic of Poland, Ch. VIII (outlining substantive protections for judicial independence).

91 *See* Carl Tobias, *Senate Blue Slips and Senate Regular Order*, 37 Yale L. & Pol'y Rev. 1, 19 (2018) (describing Senator Grassley's new approach to blue slips).

92 *See* Valerie Heitshusen, Congressional Research Serv., Senate Proceedings Establishing Majority Cloture for Supreme Court Nominations 1 (2017) (discussing the use of the "nuclear option" to lower the cloture threshold in 2013 and 2017).

93 *See* Josh Chafetz, *Unprecedented? Judicial Confirmation Battles and the Search for a Usable Past*, 131 Harv. L. Rev. 96, 119 (2017) (arguing that "[c]onfirmation politics has been contentious throughout American history.").

94 *Id.* at 118.

95 *Id.*

96 *See* Adam Liptak, *Chief Justice Defends Judicial Independence After Trump Attacks 'Obama Judge,'* ▸

N.Y. Times (Nov. 21, 2018), https://www.nytimes.com/2018/11/21/us/politics/trump-chief-justice-roberts-rebuke.html (discussing Trump's tweet and the Chief Justice's response).

97 Ian Millhiser, *The controversy over Chuck Schumer's attack on Gorsuch and Kavanaugh, explained*, Vox (Mar. 5, 2020), https://www.vox.com/2020/3/5/21165479/chuck-schumer-neil-gorsuch-brett-kavanaugh-supreme-court-whirlwind-threat.

98 Mark Sherman, *Roberts, Trump spar in extraordinary scrap over judges*, AP News (Nov. 21, 2018), https://apnews.com/c4b34f9639e141069c08cf1e3deb6b84.

99 Supreme Court of the United States, Statement from Chief Justice John G. Roberts, Jr. (Mar. 4, 2020).

100 Committee on Codes of Conduct, Advisory Opinion No. 117: Judges' Involvement With the American Constitution Society, the Federalist Society, and the American Bar Association (2020).

101 *See id.* at 1 (stating "the Committee has never suggested, and does not now suggest, that the organizations act improperly or that their goals and missions are inappropriate.")

102 *Id.* at 7.

103 Several federal judges signed onto a letter opposing advisory opinion 117. Ed Whelan, *200-Judge Letter Against Draft Advisory Opinion on Judicial Membership*, Nat'l. Rev. (May 8, 2020), https://www.nationalreview.com/bench-memos/200-judges-letter-against-draft-advisory-opinion-on-judicial-membership/

104 Thomas DeLorenzo, *US Judicial Conference committee drops proposal to limit membership of judges in Federalist Society, ACS*, Jurist (Aug. 3, 2020), https://www.jurist.org/news/2020/08/us-judicial-conference-committee-drops-proposal-to-limit-membership-of-judges-in-federalist-society-acs/

105 Committee on Codes of Conduct, Guide to Judiciary Policy Vol. 2, Pt. A, Ch. 2: Code of Conduct for United States Judges 3 (2019).

106 *See supra* notes 39–41 and accompanying discussion.

107 *See*, e.g., Annabelle Chapman, *Why Poland's "ghost election" sends a warning about its democracy*, New Statesman (May 12, 2020), https://www.newstatesman.com/world/europe/2020/05/poland-president-Andrzej-Duda-elections-pis-ruling-party-democracy (discussing an internal decision by PiS leadership to postpone an election, signaling the willingness of PiS to make unilateral decisions about election procedure).

108 The fact that the vast majority of cases appear in state courts is generally known. *Compare State Court Caseload Statistics, Bureau of Justice Statistics (2006)*, https://www.bjs.gov/index.cfm?ty=tp&tid=30, *with Judicial Caseload Indicators, 12-Month Periods ending March 31, 1997, 2002, 2005, 2006, U.S. Cts.* (2006), https://www.uscourts.gov/sites/default/files/statistics_import_dir/mar06indicators.pdf

109 The Brennan Center provides a useful map showing the differing methods of judicial selection in the states. Brennan Ctr. for Justice, *Judicial Selection: An Interactive Map*, http://judicialselection-map.brennancenter.org.

110 *See* Paul J. De Muniz, *Politicizing State Judicial Elections: A Threat to Judicial Independence*, 38 Willamette L. Rev. 367, 387 (2002) (Expressing concern over the increasing tendency to attack judges based on the political implications of their decisions).

111 *See id.* at 385–386 (discussing the negative implications of the involvement of special interest groups in judicial elections).

112 *Id.* at 386.

113 Associated Press, *Dunleavy Cuts $334K from Alaska court system over abortion dispute*, Anchorage Daily News (Jun. 28, 2019), https://www.adn.com/politics/2019/06/29/dunleavy-cuts-334k-from-alaska-court-system-over-abortion-dispute/.

114 State of Alaska Office of Management and Budget, Change Record Detail with Description — Ignoring Included Scenarios 122, https://omb.alaska.gov/ombfiles/20_budget/FY20Enacted_cr_detail_6-28-19.pdf.

115 *See* De Muniz, *supra* note 98 ("A]ttacking courts and judges — not because they are wrong on the law or the facts of a case, but because the decision is considered wrong simply as a matter of political judgment — maligns one of the basic tenets of judicial independence – intellectual honesty and dedication to enforcement of the rule of law regardless of popular sentiment.")

116 U.S. Const. art. V.

117 *See*, e.g., Order: Disposition of Appeal, *Alaska Div. of Elections v. Recall Dunleavy*, No. S-17706, (Alaska 2020) (affirming that the Governor's attacks on the judiciary could serve as a sufficient ground for recall under the state constitution).

118 José Igreja Matos, *Legal Pluralism and Creative Destruction*, UNIO EU Law Journal: In honour of JUDGE CUNHA RODRIGUES, Jul. 2014, at 113, 117.

119 *Supra* note 99.





## 2021 ANAO statement on Afghanistan

INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI

PALAZZO DI GIUSTIZIA - PIAZZA CAVOUR - 00193 ROMA - ITALY

**ANAO 's President statement on AFGHANISTAN**

As President of the region of the International Association of Judges that encompasses Afghanistan, (Asia, Australia, North America and Oceania) I write to recognize and support the call of judges of that country for protection during a critical time. Nothing could be more important to the rule of law than that the lives of its judges be protected. The world should take note of, and respond to, their cries for help.

Ms Allyson Duncan
President of the ANAO Group

**********

En tant que présidente du groupe régional de l'union internationale des juges qui englobe l'Afghanistan (Asie, Australie, Amérique du Nord et Océanie), j'écris pour que soit reconnu et soutenu l'appel des juges de ce pays à être protégés pendant cette période critique. Rien n'est plus important pour la primauté du droit que la protection de la vie des juges. Le monde doit prendre note de leurs appels à l'aide et y répondre.

Mme Allyson Duncan
Président du groupe ANAO

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## 2021 IAJ Statement on the Judicial Crisis in Lebanon

### LEBANON QUEST TO SUPPORT JUDICIAL INDEPENDENCE

On August 4, 2020, tons of ammonium nitrate that had been neglected at the Beirut port exploded, killing over 200 victims, injuring another 7500 and leaving hundreds of thousands homeless. More than a year later, no one has as yet been held accountable and the investigation has been bogged down in political resistance.

Tarek Bitar, head of the Beirut Criminal Court who is currently tasked with heading the investigation, has encountered significant opposition. In July of 2021, Judge Bitar sought permission to prosecute high level political and security officials, but those efforts have been largely stymied.

According to BBC News, on October 14, 2021, at least six people were killed and 32 others injured by gunfire in the capital of Beirut during a protest outside the Palace of Justice. Earlier that day, the Court had dismissed a legal complaint brought by two former government ministers and AMAL MPs whom Judge Bitar had sought to question on suspicion of negligence in connection with the explosion. Families of the victims had condemned the complaint, which had caused the investigation to be suspended for the second time in two weeks.

The Lebanese Association of Judges, a Member of ANAO, was among the first organizations to publicly support Judge Bitar. When asked, however, whether the Association's efforts would benefit from a statement of support from ANAO, President Faysal Makki replied that he would prefer a statement of support for legislation currently pending before the Parliament to support Judicial Independence.

According to the Tahrir Institute for Middle East Policy, a draft law that would guarantee the independence of the judiciary is awaiting action by Parliament. Its is original form, the draft law guarantees financial independence from the Ministry of Justice and restructures the Supreme Judicial Council to be composed of judges and legal experts elected by their peers for only four-year terms. In addition, it also promotes more inclusion from different segments of society, including women. The extent to which this will be modified or diluted by Lebanon's MPs is unclear.

The attached statement calls upon the Lebanese government to adopt the standards of Judicial Independence recognized by the International Association of Judges (IAJ), Minimum Standards of Judicial Independence of the International Bar Association, and the International Standards of Independence of Judges and Lawyers articulated by the United Nations Special Rapporteur.



### STATEMENT CALLING FOR THE ADOPTION OF LEGISLATION SUPPORTING JUDICIAL INDEPENDENCE IN LEBANON

**RULE OF LAW**

**SEPARATION OF POWERS**

**HUMAN RIGHTS**

Under well-established standards of international law, judiciaries should be impartial, politically independent, and able to function without fear. The International Association of Judges, based in Rome and founded in Salzburg in 1953, consists of national associations from over ninety countries. Its goal is the promotion of such judicial independence as a guarantee of fundamental human rights.

ANAO, the region of the IAJ of which Lebanon is a member, calls upon the government to adopt these principles as a matter of the highest national priority. To the extent duly appointed judges are carrying out the duties invested in them as a consequence of their office, they must be allowed to do so without fear of personal safety or political reprisal. The stature of the judiciary vis a vis that of other branches of government must be preserved and protected.

It is our understanding that legislation is currently pending before Parliament that would take steps to increase the financial independence of the judiciary as well as giving it a stronger say in matters of its own governance and expand the concept of human rights. Such steps would be in accord with views expressed by many members of the international community in seeking fundamental and principled change. Recent instances of civil unrest in Beirut appear to underscore the need for such action to enhance the transparency and legitimacy of the government.

It is our hope that Lebanon will heed the call for action to enhance the judiciary and support its independence from the political branches of government. We stand ready to assist that endeavor in any way that we can. Thank you for your consideration of this request.

**2021 Presentation on behalf of the International Institute of Justice Excellence to British Chief Justice Lady Justice Brenda Hale**

Appendix B

IIJE Presentation to Honoree

Grays Inn London

October 22, 2021

BRENDA HALE, BARONESS HALE OF RICHMOND

American lexicon has an unfortunate tendency to first create, and then attempt to legitimize, non-existent words. It is a propensity I generally deplore, but there are times when a term seems apt. Such is the case with the noun "Shero," a feminine adaptation of the overused term "hero."

My mother was a "shero," with considerable impact on a relatively small scale. She battled triple discrimination, on the bases of race, gender and disability, in a small Southern city in the 1960s and 70s. Yet she persevered to become the law librarian at an historically black law school in Durham, North Carolina. In that role, she taught a generation of African Americans who were not allowed to attend the university from which I obtained my law degree, but nevertheless went on to greatness.

Lady Hale is, if you will forgive the colloquialism, a "shero" of enormous impact on a grand scale. We are here today to honor her for all that she has done. However, I would like to focus as well, based on admiration from afar, on what she has said, and who she is. Her words and her very presence, as well as her actions, have made a difference. At every phase of Lady Hale's phenomenal life, she has been a "first," or one of a very few. That in and of itself is a weighty responsibility, both with respect to its substantive burdens and the pressures of the additional visibility her unique status necessarily brought with it. Hers was never the option to fail to succeed in anonymity.

Lady Hale's accomplishments are many and her stature greater still, in large measure because she has used the positions she has held to speak of the need for the judiciary to become more diverse, so that the public can have greater confidence in judges: "in a democracy which values everyone equally, and not just the privileged and the powerful, it is important that their rights and responsibilities should be decided by a judiciary which is more reflective of the society as a whole,



and not just a very small section of it." The battle for recognition and inclusion is still being waged around the world, but it has been made easier under Lady Hale's aegis.

The fight has not been hers alone. I want to draw a comparison, and I am not the first to do so, between Lady Hale and the American icon with whom she has appeared and spoken, and with whom she appears to draw common cause. I refer, of course, to Justice Ruth Bader Ginsberg, who, in her later years, was accorded and apparently reveled in the Rapper label, the Notorious RBG.

Supreme Court Justices rarely attain celebrity, much less iconic, status. But Lady Hale has secured a rare popular prominence not unlike that of Justice Ruth Bader Ginsberg, a judge of similar jurisprudential and social sensibilities.

The similarities are remarkable. Both were law professors at some of the most prestigious institutions in their respective countries; both married eminent legal scholars; and both served as judges on lower courts before their elevation to their nation's highest ones.

Both have unique fashion styles: Justice Ginsberg is famous for her jabots—the white lace collars she wore at the throat of her black robes to bring a touch of femininity to the otherwise stark attire. She was particularly famous, if not infamous in some circles, for the special collar she wore to dissent. Similarly, Lady Hale is known for her brooches, and particularly a silvery sparkly spider one that caused a great deal of speculation when she wore it to deliver what is sometimes called the Brexit decision. "You can do a lot," she said in classic understatement, "with a spider."

The two Justices are also famous for their observations about the status of women. "Omnia feminae aequissimae," "Women are equal to everything," became Lady Hale's motto for her coat of arms upon being made a Law Lord. Justice Ginsberg equally famously observed, "when I am sometimes asked, when will there be enough women on the Supreme Court my answer is when there are nine. People are shocked. But there have been nine men forever and no one has ever questioned that!"

And finally, the two women speak with a quiet conviction that carries force without the need for volume. To the contrary, they both epitomize a spirit of

inclusion and a recognition that there is room for other points of view. As Lady Hale has commented, “I try not to be too certain I am right.” Justice Ginsberg’s view is similar: “Fight for the things that you care about, but do it in a way that will lead others to join you.”

At a time when polarization and conflict seem rife in public discourse, Lady Hale’s examples and her words exhort us to recognize the cohesive strength that lies in respectful difference and conscious diversity. As she shows us, it is possible to be strong without being strident, to differ without conflict, disagree without being disagreeable and achieve without doing so at the expense of others. Lady Justice Hale is a “shero” who honors us by allowing us to recognize her.





SPEAKING WITH ONE VOICE

**The precipitous withdrawal of American forces from Afghanistan triggered a human rights crisis of staggering proportions. While governments struggled to respond, civil society came together to provide desperately needed assistance. The International Association of Judges, under the leadership of President Matos, was a critical part of that effort. Given the scope of this crisis and others, he has created a Working Group to open lines of communication with other international entities devoted to the preservation of judicial independence and the rule of law. That effort has already begun to bear fruit.**

On August 15, 2021, the Afghan government collapsed after the Taliban entered Kabul in force. Facing little resistance, Taliban fighters took over the Presidential Palace shortly after President Ghani fled the country.

Even before Kabul fell, warning signs were appearing in international media. The previous February, the International Association of Women Attorneys (IAWJ) issued a strong statement on the killing of two female Supreme Court Justices, Qadria Yasri and Zakia Herawi, who were assassinated in Kabul on the way to their posts. Both women were members of the IAWJ and had attended meetings in the United States.

Shortly thereafter, a desperate plea from a woman judge appeared in media outlets around the world: “If the Taliban takes Kabul I am going to die, it is certain.” 8/15/21 Radio Canada.

Within days of the collapse of the Afghan government, the International Association of Judges had issued a call for international support in Afghanistan. As President of ANAO, the region that includes Afghanistan, I also issued a statement. President Matos received messages and offers of assistance from judicial associations in France, Poland and Brazil, as well as other expressions of concern.

President Matos made a call for assistance for Afghan women judges, in particular, a part of his inaugural message. To further that goal, he reached out to Judge Vanessa Ruiz, immediate Past President of the IAWJ. On September 16, 2021, the two associations issued a joint statement. He also supported the concept of an IAJ Working Group to reach to international organizations with a similar focus to explore communicating on issues of common concern.

The effort bore fruit almost immediately. The joint IAJ/IAWJ statement was shared with, and disseminated by, other associations advancing the same effort: the International Bar Association Human Rights Foundation, the International Institute for Justice Excellence at the Hague, and the ABA Rule of Law Initiative (ROLI). The UN Special Rapporteur for the Independence of Judges and Lawyers, and CEELI, the Central and Eastern European Law Initiative, were also contacted.

On November 1, 2021, the Bolch Judicial Institute for International Studies convened a panel to discuss Afghanistan. First, two female Afghani judges, Judge Tayeba Parsa and Judge Zohal Noori Rahiq, who managed to escape Kabul with the aid of lawyers in Poland and the UK, spoke of their horrific experiences during that period. Then the remaining panel members, Justice Susan Glazebrook, New Zealand Supreme Court and current President, IAWJ; David Rivkin, Past President of the International Bar Association (IBA); Baroness Helena Kennedy President of JUSTICE, and Director of the IBA Human Rights Center and myself, spoke of the efforts underway within our respective organizations.

As a member of the House of Lords, Baroness Kennedy was able to communicate with ministers in the Foreign Office and with ministers of foreign governments to arrange for flights to lily pads. A lily pad is the name given to a safe place, from which one may venture to another location or before proceeding to one's final destination. Baroness Kennedy also reached out to donors to help raise the money needed to fund flights. Given that each plane costs £800,000, this alone was a major undertaking. On her second operation, in mid-October, her group was able to bring 77 families out of Afghanistan. In total, the Human Rights Initiative has managed to remove approximately 500 people: 103 women and their families, as well as prosecutors and MPs, to safe locations.

Baroness Kennedy was particularly grateful to Justice Walter Barone of Brazil, President of the Ibero group; one of the groups of judges she worked to extricate from Afghanistan went to Brazil, due in large measure to his efforts to obtain visas and meet other entry requirements. With Justice Barone's assistance, Baroness has reached out for assistance in Argentina as well.

All members of the judicial panel spoke with great feeling about what they have done and witnessed. Our consensus was equally strong that Afghanistan will not be the last frontier challenges to judicial independence and the rule of law. But we all hope that we can maintain the open lines of communication we have established so that we can call upon each other going forward.

I want to thank Judge Matos for establishing the Working Group to foster this effort, and for Margaret McKeown, Chair of the Fourth Study Commission and past chair, ABA ROLI, Aicha Ben Belhassen of Tunisia, and Ewelina Ochab, of Urugray, Program Officer, IBAHRI, for their assistance.





# DIVERSITY IN THE FEDERAL JUDICIARY:

# WHAT IS ITS STATUS?

# WHY DOES IT MATTER?

# WHAT CAN BE DONE?

## I. INTRODUCTION

### A. Background

The subject of diversity generally has gained in significance in recent years. It has become an increasingly important topic of discussion in conversations among multiple groups of individuals and in organizations in a variety of contexts. The reasons aren't hard to discern. In the United States, race seems to be the recurring issue we have yet to resolve. We all take comfort, and legitimately so, in the fact that enormous strides toward equality have been made. We have had an African American President—although not a woman, at least not yet. Previously underrepresented groups have gained ground in almost every venue, from city councils to corporate board rooms.

But then we are brought up short by a video of George Floyd, lying unarmed and handcuffed on the ground, defenseless and pleading that he cannot breathe, being murdered on camera by a white police officer who knelt on his neck for over nine minutes until he died. And other officers looked on, doing nothing.

How can such a thing happen? It is hard to say. But it is not hard to understand why the federal judiciary, at the fulcrum of our country's system of justice, has come under scrutiny. As judges, we are expected to be the bulwarks that protect the individual from the tyranny of extra-judicial behavior and lawlessness.

It is both ironic and hopeful to note that on June 15, 2022, Jerry Blackwell, one of the high-profile prosecutors who helped send ex-Minneapolis cop Derek Chauvin to prison for the murder of George Floyd, was nominated to be a federal judge. Who the judge is, matters.

I will briefly relate two anecdotes to illustrate the point before turning to the discussion at hand. The first involves Judge Edward Davila, who sits in San Jose, California, and presides over a diverse docket. He is the first Latino Judge to sit in that court in over twenty years. In a case involving a limited-English speaking Latino litigant, Judge Davila discussed several procedural matters and then asked the litigant if he had any questions Appearing nervous, the litigant looked at Judge Davila and asked incredulously, "will you be my judge?" "Those simple words, freighted with anxiety bespoke the sense of intimidation and alienation too often felt by members of underserved communities. In Judge Davila, that litigant found an island of hope in a sea of isolation, hope that he would at least be heard and understood. This small and seemingly insignificant courtroom moment underscores the larger point that a bench that is reflective of the community it serves can be instrumental in securing the trust and confidence of the public." *Statement of Judge Edward M. Chen on the Importance of Diversity in the Federal Judiciary, March 25, 2021, Congressional Record.* Who the judge is, matters.

The final anecdote references the female judicial icon Justice Ruth Bader Ginsberg, who died in 2020. In 1993, Justice Ginsberg joined the first woman on the Supreme Court, Justice Sandra Day O'Connor, and served with her until Justice O'Connor stepped down in 2006.

One of the opinions for which Justice Ginsberg is best remembered is that of the United States v. Virginia Military Institute (VMI). She authored the 7-1 decision opening the doors of the last all-male public university to qualified women. It is a decision that came out of the Fourth Circuit, where I sat.



VMI is the alma mater of General George C. Marshall, the Army's first five-star general and a Nobel Peace Prize winner, as well as important people in almost every field of endeavor. The University built its reputation on its tradition of military discipline and academic rigor. But no women need apply.

The United States Department of Justice sued VMI, a publicly funded institution, for excluding women. The Supreme Court agreed with the government's position. Writing for the Court, Justice Ginsberg categorized as "presumptively invalid. . .a law or official policy that denies to women, simply because they are women, equal opportunity to aspire, achieve, participate in, and contribute to society based upon what they can do." Would the outcome have been the same had Justice Ginsberg not participated? Perhaps. But the moral imperative with which she spoke cannot be overstated. Who the judge is, matters. *Discussion drawn from the United States Courts website maintained by the Administrative Office of the Courts in Honor of Women's History Month.*

B. Scopes of Discussion:

1. The Federal Judiciary

The scope of the discussion of diversity in the judiciary in the United States is potentially so broad that it had to be narrowed for purposes of our discussion today. By way of background, more than 100 million cases are filed each year in state trial courts, while roughly 400,000 cases are filed in federal trial courts. There are approximately 30,000 state judges, compared to only 1,700 federal judges. *FAQS : Judges in the United States; Institute for the Advancement of the American Legal System, University of Denver. HTTPS://iaals.du.edu.*

Because state systems among themselves also differ so dramatically in the way judges are elected and retained, my first "narrowing" decision was to focus solely on the federal judiciary.

For purposes of general comparison, however, it may be useful to know that broadly speaking, state judges are chosen in one of five ways

- Gubernatorial appointment
- Legislative appointment
- Partisan elections
- Non-partisan elections and
- Commission-based selection

Even within those five general categories, however, variations exist. After the initial appointment/selection, re-elections may be by a different methodology. Selections may be district-wide or state-wide. Term lengths vary. The Brennan Center for Justice at the New York University School of Law, has done work in this area, publishing a piece on Judicial Section for the 21st Century. (The article, published in 2016, needs to be updated.) `

One consequence of the varied selection methodology is that the race barrier at the state level was breached much earlier than at the federal level. It appears that the first African American, Jonathan Jasper Wright, became a state court justice in 1870. Justice Wright moved from Pennsylvania to South Carolina and became involved in Republican Party politics. As a result, he was appointed to the South Carolina Supreme Court and served until 1877.

The first elected judge of color is believed to be James Dean, a black attorney in Florida, who was elected at the local level in 1888. He was suspended from his position less than eight months later by the governor of Florida for breaking anti-miscegenation laws for issuing a marriage license to a couple of Cuban descent, who were considered to be of two different races. In 2006, then-Florida Governor Jeb Bush reinstated his judgeship through proclamation.



By comparison, in the federal judiciary, it was not until 1937 that President Franklin Delano Roosevelt appointed the first person of color, William Hattie, to the federal district court for the U.S. Virgin Islands. President Roosevelt earlier appointed the first woman, Florence Ellinwood Allen, to the U.S. Court of Appeals to the 6th Circuit in 1934.

2. Article III Judges

Even within the general category of federal judges, further narrowing and an explanation is necessary.

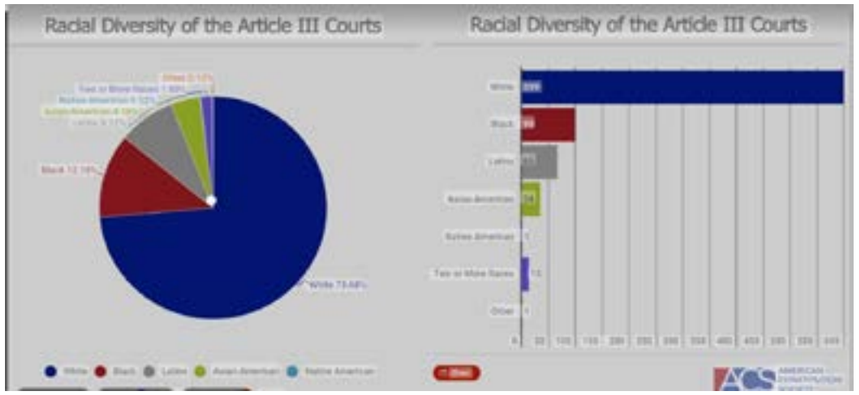
At a high level of generality, Article III Courts are those established pursuant to Article III of the United States Constitution, which governs the appointment, tenure and payment of Supreme Court justices, circuit judges, and district judges. These judges may only removed by impeachment. Article III Judges are nominated by the President and confirmed by the Senate

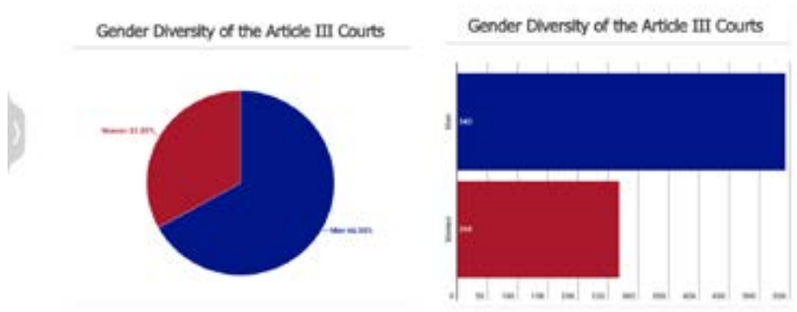
Article I judges, on the other hand, are created by the legislature and have differing levels of independence, length of terms, and selection methodology. Generally speaking, they are not subject to the same protections as Article III judges: they do not have life tenure and their salaries may be reduced by Congress. Because of the variations among the ranks of Art. I judges, I focus today on the Presidentially-appointed, Art. III judges. Because Art. III Judges are Presidential-appointees, the political forces that come into play create potentially more significant challenges for the interests of diversity.

C. Data:

What are the numbers and what do they tell us about diversity within the ranks of the Article III Judiciary?

The following charts are taken from the website of the **American Constitution Society,** drawn from statistics from the Federal Judicial Center: *acslaw.org/judicial-nominations/October-2020-snapshot-diversity-of-the-federal judiciary*








One fact that stands out is the minorities fare worse in the judiciary at every level—district, circuit and the Supreme Court. Women make up approximately one-third of the ranks at each level. And, of course, there are three women on the United States Supreme Court. African Americans, on the other hand, do not rise above 13%. In its history, there had only been two on the Supreme Court—until July 1, when Justice Ketanji Brown Jackson will joined their ranks, making her the second currently sitting African American (the third in history) and also the fourth woman.

D. Why is diversity on the bench so important?

In March of 2021, the House Judiciary Subcommittee on Courts held a series of hearings to consider this issue. Over several days, the Subcommittee heard testimony from a number of individuals among them Judges (including Judge Bernice Donald, a former active IAJ member), Academics and others on why having a diverse federal judiciary is important and how it can be achieved.

In opening the March 25, hearing, House Judiciary Committee Chairman Jerrold Nadler (D-NY) introduced the subject in this way: "Ultimately, we need to remind ourselves of what most Americans understand: That a diverse federal judiciary enhances public faith in the courts and improves the judicial process." Representative Nadler's remarks included the following quote drawn from the confirmation process of a current member of the United States Supreme Court: *"When I get a case about discrimination, I have to think about people in my own family who suffered discrimination because of their ethnic background or because of religion or because of gender. . .and I do take that into account. . ."* The nominee went on to add "*my father was brought into this country as an infant, grew up in poverty," and "could not find a job as a teacher due to the discriminatory hiring practices prevalent at the time."*

These words were spoken by now-Justice Samuel Alito at his confirmation hearing in 2006.

Stacey Hawkins, a Professor of Law at Rutgers University who teaches and writes about the intersection of law and diversity, has addressed this subject extensively, and was one of the Academics who testified before Congress. She posited four reasons why diversity on the federal bench is critical:

1. Judicial Legitimacy Depends on Public Trust

The first is that judicial legitimacy depends on public trust. Alexander Hamilton, one of our nation's founders and author of Number 78 of the Federalist Papers famously said that the judiciary branch of the proposed government would be the weakest of the three: because it had "no influence over either the sword or the purse, it may truly be said to have neither force nor will, but merely judgment." The Courts necessarily rely on public trust to achieve both their legitimacy, and necessarily, their effectiveness.

In the wake of decisions on such controversial topics as abortion and gun control, regard for the Judiciary has fallen as low as it has ever been. It is also true, however, that approval of the judiciary does not hold constant across all population groups. As Professor Hawkins noted, data shows that while concern for the fairness of our justice system is to some extent endemic, it is especially acute among African Americans. "One study found that only a quarter of white respondents (25%) but more than three-quarters of Black respondents (78%) believe the justice system treats Blacks unfairly." Professor Hawkins's statement referring to Nancy King, *The Effects of Race-Conscious Jury Selection on Public Confidence in the Fairness of Jury Proceedings: An Empirical Puzzle,* 31 Am. Crim. Rev. 1263, 1276 (2016). This marked difference





in perceptions is strengthened when the judiciary does not fairly reflect the population it purports to serve.

2. A Diverse Bench Fosters Public Trust in the Judiciary

Studies suggest that eroding confidence in the judiciary results less from judges' substantive decisions than from the appearance of unfairness in the process.[1] United States Bankruptcy Judge Frank J. Bailey of Massachusetts has spoken to this issue. Judge Bailey, an Article I Bankruptcy Judge, made the point that by far the largest number of cases filed in federal court each year are those filed in federal bankruptcy courts. In other words, most Americans have their federal court experience before a bankruptcy judge. This is particularly likely to be true in a recession. And yet there are no, nor have there ever been any, African American Bankruptcy Judges in the First Circuit which includes Massachusetts. Judge Bailey summarized his thoughts on the need for the bankruptcy bench to reflect the diversity of the community it serves as follows: "Federal judges deliver bad news to people every day, and perceptions of fairness matter." Statement of Honorable Frank J. Bailey, United States Bankruptcy Judge District of Massachusetts to the Committee on the Judiciary of the US House of Representatives, Subcommittee on Courts, Intellectual Property and the Internet, March 25, 2021.

3. A Diverse Bench Improves Accountability to the Public

On this point, Professor Hawkins described the work of Jeffery Abramson in the context of diverse juries, arguing that racial diversity among judicial decision-makers promotes three different democratic ideals: (1) epistemical diversity, which reflects the populist theory about the collective wisdom of the voting public; (2) deliberative diversity, termed, in other writings, as the wisdom

[1] A 2002 study of 1656 respondents who interacted with the justice system demonstrated that their perceptions of the fairness of the process employed in the decision-making was more determinative of the respondents' willingness to accept the decision than the substantive outcome itself.

of the crowd, and the notion that the collective engagement of many minds is superior to the opinions of a few brighter minds; and (3) representative diversity, describing the premise that diverse representation matters in a democracy. Jeffery Abramson, *Four Models of Jury Democracy, 90 Chi.-Kent L. Rev. 861, 883 (2015).*

As a nominee to the United States Supreme Court, Now-Justice Sotomayor drew considerable flak for saying that "a wise Latina Woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life." I think what she was trying to say is that the addition of the voice of a wise Latina woman to a collective that did not otherwise include it would be stronger.

E. How can diversity be increased? Increase the pipeline

Because of the Presidential-appointment process in the Article III judiciary, increasing diversity is, at least to some extent, a matter of will. In 1978, then-President Jimmy Carter came to office with the stated goal of increasing minority representation within the federal judicial branch and did so.

However, other measures can help address the issue, primarily by increasing the presence of woman and minorities in the pipeline.

1. Law School Admissions

Scrutiny begins at the law school level. Although law school graduation is, of course, a prerequisite to becoming a federal judge, it is further the case that it helps to go to the "right" school. A student's likelihood of becoming a federal Judge drops considerably if he or she does not attend one of the nation's most elite law schools.

To put the matter in perspective, "Harvard has had more representation on the Supreme Court than the bottom ninety-five percent of law schools combined." Just three elite schools—





Harvard, Yale and Columbia—have been responsible for more than half of all Supreme Court justices who have served on the bench since the nation's founding. Jason Iuliano and Avery Stewart, "The New Diversity Crisis in the Federal Judiciary," *Tennessee Law Review, 84 (247)(2016).*

2. *Law School Loan Forgiveness*

Setting aside the problem of getting into the "best" school, the cost of a law school education is also a limiting factor for individuals from lower socio-economic backgrounds. Law school tuitions can range anywhere from $12,000 to almost $70,000 per year. Ileana Kowarski, "See the Price, Payoff of Law School Before Enrolling," *US News and World Reports,* March 12, 2019.

This crushing debt load has consequences, affecting where students can go to law school on the front end, and what they can do when they graduate. On the front end, the better the school at which the student matriculates, the brighter the prospects for a judicial appointment thereafter. On the back end, the bigger the debt load, the more students who rely on loans as part of their financial aid package may have to make career choices that do not maximize their chances of become judges.

Robust student loan forgiveness packages are one potential answer to this problem.

3. Judicial Clerkships

Judicial clerkships, extremely valuable and sought-after positions on the pathway toward judgeships, but clerkships are government jobs that do not pay the kind of salary that student loan debt often requires. Also, not being able to clerk takes away a critical mentorship opportunity. Yet I have talked to groups of minority law students who say they cannot afford to apply for a clerkship because they have to make money to pay off their student loans.

Judge Ketanji Brown Jackson clerked for Justice Breyer, the Justice she will replace. Justice Kavanaugh clerked for Justice Kennedy, the Justice he replaced. A number of Supreme Court Justices have a hierarchy of such "apprenticeship" clerkships, requiring first a district court and then an appellate court clerkship. And the bias toward "elite" schools comes into play here as well. According to the article by Iuliano and Stewart cited above, it appears that between 1950 and 2014, students from Harvard accounted for almost 25% of all Supreme Court law clerks, and another almost 20% came from Yale. This creates almost circular problem: students who cannot get into Harvard have a lower chance of ultimately clerking and being appointed to the bench, and therefore a lower probability of being in a position to hire other talented under-represented individuals as clerks to address the issue of diversity on the bench.

CONCLUSION:

I would like to close with the powerful words of Judge Vanessa Ruiz, a Senior Judge for the Court of Appeals in the District of Columbia and Past President of the International Association of Women Judges in a speech to the UNODC on insuring judicial independence and integrity: "The judiciary will not be trusted if it is viewed as a bastion of entrenched elitism, exclusivity, and privilege, oblivious to changes in society and to the needs of the most vulnerable. Indeed, citizens will find it hard to accept the judiciary as the guarantor of law and human rights if judges themselves act in a discriminatory manner. That is why the presence of [the underrepresented] is essential to the legitimacy of the judiciary."

This may never have been more true.



SOURCES

**REPORT, October 3, 2019, *Building a More Inclusive Federal Judiciary,* The CAP Report (Center for American Progress), americanprogress.org

F.J. Bailey, *Does the Federal Art. I Bench Reflect the Ethnicity of the Populations that They Serve? What if the Answer is No?* The Judges Journal, ABA Judicial Division, Vol. 55, No. 2 (2016)

Nancy Scherer, *Diversifying the Federal Bench: Is Universal Legitimacy for the U.S. Justice System Possible,* 105 Nw. U. L. Re. 587 (2011)

*FED. JUDICIAL CTR, BIOGRAPHICAL DIRECTORY OF ARTICLE III FEDERAL JUDGES, 1789–PRESENT*

Susan Sternberg Greene, *Race, Class & Access to Civil Justice,* Iowa L. Rev. 1263 (2016)

2022 Australian response

**INTERNATIONAL ASSOCIATION OF JUDGES**

**"DIVERSITY IN THE FEDERAL JUDICIARY"**

**AUSTRALIAN RESPONSE**

**29 AUGUST 2022**

This commentary is prepared for presentation at the educational program, chaired by The Honourable Justice Clayton Conlon, Judge of the Ontario Superior Court of Justice and Deputy Judge of the Nunavut Court of Justice, at the meeting of the Asian, North American and Oceanian Regional Group of the IAJ-UIM (**ANAO**), to be held Tel Aviv in September 2022. These brief comments, focus on the Australian experience and follow the excellent report prepared by Judge Allyson Duncan (ret.) and Judge Joanna Seybert, Judge of the United States District Court, Eastern District of New York (**Report**).

My thanks are extended to my Associate Sarah Browell and my Deputy Associate Hugo Balnaves for their assistance with the research in the preparation of this commentary.

The opinions expressed herein are those of the author and may not necessarily reflect those of the Federal Circuit and Family Court of Australia or the Australian Judicial Officers Association.

The Australian judiciary is bifurcated into the federal and state jurisdictions. This response will discuss the issue of diversity amongst the judiciary at both the state and federal level.

## WHAT IS ITS STATUS?

Historically, the Australian judiciary has been homogenous, comprising mostly white, middleclass, and heterosexual males from similar backgrounds.[1] That homogeneity is slowly shifting however limits on the collection of statistical information make changes difficult to measure.[2]

Gender on the bench is one facet of diversity on which there is data available in Australia. As at June 2021, the percentage of women in the Australian judiciary was 40.7%, which was a marked increase of 12.7% from 2020.[3] It should be noted that this percentage represents an overall picture and within each jurisdiction there are significant differences. For example, in the Federal Court of Australia, the percentage of women on the bench in 2021 was 26.9%.[4] Between superior and inferior courts there are also noticeable differences: in 2021 the percentage of women within the superior Australian courts was 32.7%, whereas in the inferior courts it was 44.2%.[5]

Data regarding ethnicity and country of birth is more difficult to obtain. Australia has one of the highest percentages in the world of foreign-born inhabitants,[6] and therefore a statistical understanding of how population demography is represented on the bench would be invaluable. Data collection has been

[1] Brian Opeskin, *Future-Proofing the Judiciary: Preparing from Demographic Change* (Palgrave Macmillan, 2021), 236 ('Future-Proofing the Judiciary').
[2] Gabrielle Appleby et al 'Contemporary Challenges Facing the Australian Judiciary: An Empirical Interruption' 2018 *Melbourne University Law Review* 42(2): 299, 311.
[3] Australasian Institute of Judicial Administration Inc. *AIJA Judicial Gender Statistics: Number and Percentage of Women Judges and Magistrates at June 2021*, <https://aija.org.au/research/judicial-gender-statistics/>.
[4] Ibid.
[5] Ibid.
[6] Brian Opeskin 'The State of the Judicature: A Statistical Profile of Australian Courts and Judges' (2013) UTSLRS 1; (2013) 35(3) *Sydney Law Review* 489.



identified as an obvious barrier as questions of ethnic background, sexual orientation, professional history and socio-economic status can only be obtained by questionnaire, and might be seen by judges as intrusive.[7]

## WHY DOES DIVERSITY IN THE JUDICIARY MATTER?

Increasing diversity in the judiciary is important for three reasons: legitimacy, equality, and difference.

***Legitimacy***

There is an inherent value in having courts that 'look like Australia'.[8] The public is more likely to accept the judiciary's capacity to 'do right to all manner of people' if it reflects the diverse and overlapping attributes of the general population.[9] The only woman to have sat on the UK Supreme Court Bench, Baroness Hale of Richmond, speaks of the importance of a diverse judiciary in maintaining public confidence, since the public expect to see a judiciary which serves 'the whole of the population not just a section of it'.[10] Currently in Australia, a frequently cited factor bearing upon public confidence in the courts is the 'extent to which those appointed to them are seen to reflect the community's diversity'.[11] Former Australian High Court Justice Michael McHugh commented on gender diversity in the judiciary saying, "The need to maintain public confidence in the legitimacy and impartiality of the justice system is to me an unanswerable argument for having a judiciary in which men and women are equally represented."[12]

***Equality***

The equality rationale for judicial diversity seeks to recognise the abilities of all legal professionals who are eligible for elevation to the bench, and afford them equal opportunity of appointment free from discrimination. This rights-based argument is supported by international law which promotes 'respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.[13] The equality argument for judicial diversity is most often met with the traditional 'merit' retort, however merit and diversity need not be antithetical.[14] From a utility perspective, current 'gatekeeping' of judicial positions to white middle-class heterosexual males in superior Australian courts can lead to a reduction of capable candidates. When making judicial appointments, judiciaries

[7] Appleby et al (n 2) 311.
[8] Brian Opeskin, '*Dismantling the Diversity Deficit: Towards a More Inclusive Australian Judiciary'* in Gabrielle Appleby and Andrew Lynch '*The Judge, the Judiciary and the Court: Individual, Collegial and Institutional Judicial Dynamics in Australia*' (Cambridge University Press 2021) 83, 88.
[9] Future-Proofing the Judiciary (n 1) 244.
[10] Erika Rackley 'Women, Judging and the Judiciary: From difference to diversity' (2013, Routledge) xv.
[11] Elizabeth Handsley and Andrew Lynch 'Facing up to Diversity? Transparency and the Reform of Commonwealth Judicial Appointments 2008-13' (2015) *Sydney Law Review* 37(2) 187, 200.
[12] Dismantling the Diversity Deficit (n 8) 88.
[13] Ibid 86.
[14] Handsley and Lynch (n 11) 206.

should not neglect diversity, as doing so would be limiting the candidate pool and excluding a huge proportion of the population.[15]

***Difference***

To use gender as an example, the former Justice of the High Court, The Honourable Michael Kirby AC CMG has stated that, "Women are not just men who wear skirts, they have different life's experience. They sometimes have a different way at looking at problems".[16] The same may be said for all facets of diversity: improving diversity in the judiciary will 'improve judicial decision-making by avoiding the narrowness of experience and knowledge implicit in a collection of homogenous, even if excellent, judges'.[17] In a survey of 142 judicial officers in Australia, it was found that there was a significant correlation between gender and judges who were concerned about the issue of integrity, quality and diversity of appointments, highlighting that women experience judicial life differently.[18] Looking again at gender diversity, 'informational theory' suggests that since women have different experiences to men, women can play a role in countering the 'gender-based myths, biases, and stereotypes [that] are deeply embedded in many male judges, as well as the law itself'.[19] This theory could easily be transposed onto other diversity characteristics like race, ethnicity, Aboriginal or Torres Strait Islander origin, class, sexuality or geographical location.

**WHAT CAN BE DONE?**

As noted above, the make-up of the Australian bench is slowly shifting. In June of 2022, the first Indigenous Australian, Lincoln Crowley, was sworn in as a Justice of the Supreme Court of Queensland which is the superior court in that jurisdiction.[20] Such an appointment has been long overdue, and will hopefully forge a path for more First Nations peoples to join the bench.

As noted in the Report, an increase in diversity on the bench begins in the education sector, however is also informed by the judicial selection process. Opeskin notes that as "most judicial officers in Australia are appointed from the practicing Bar […] one cannot expect a diverse Bench without a diverse Bar".[21] In Victoria and New South Wales, the two Australian States with the largest populations, the percentage of barristers at the Bar who were born overseas is 15% and 14% respectively. This is worrying when compared to 26% of the population being born overseas.[22]

[15] Dismantling the Diversity Deficit (n 8) 88.
[16] Michael Kirby, 'Women in the Law: What Next?' (2002) 16 *Australian Feminist Journal* 148, 154-155.
[17] Dismantling the Diversity Deficit (n 8) 86.
[18] Appleby et al (n 2) 323.
[19] Opeskin (n 8) 87.
[20] Audrey Courty, 'Lincoln Crowley first Indigenous person to be sworn in as Supreme Court Justice', *ABC News* (online, 13 June 2022) <Lincoln Crowley first Indigenous person to be sworn in as Supreme Court Justice - ABC News>.
[21] Future-Proofing the Judiciary (n 1) 266.
[22] Ibid 267.





Australia has so far been reluctant to implement any radical changes to judicial appointment.[23] Between 2008 and 2013, the Federal Labour Government introduced new measures for the selection of judges in the Federal jurisdiction which involved seeking expressions of interest for judicial appointments to promote transparency and diversity.[24] This appointment model was scrapped in 2013 when the Federal Government changed, and no data was ever formally collected to understand if there was a significant impact on diversity on the bench as a result.

If Australia is to move towards a bench which better reflects the wider populous, it is imperative that more detailed data is collected and more transparent reforms are made to the judicial appointment process where merit and diversity are appropriately balanced.

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Federal Circuit and Family Court of Australia
Commonwealth Law Courts Building
Melbourne, Australia

[23] Andrew Lynch, '*Diversity without a judicial appointments commission: The Australian experience*' in Graham Gee and Erika Rackley, *Debating Judicial Appointments in an Age of Diversity* (Routledge, 2018) 101.
[24] Future-Proofing the Judiciary (n 1) 268.

## 2022 Joint IAJ and IAWJ Statement on the Killing of Judges in Yemen

**STATEMENT ON THE KILLING OF JUDGES IN YEMEN**

**BY THE INTERNATIONAL ASSOCIATION OF JUDGES and the**

**INTERNATIONAL ASSOCIATION OF WOMEN JUDGES**

The Acting President of the Yemeni Judges Association and the President of the Yemen Women Judges Forum have reached out to the international judicial community seeking support on behalf of members of the judiciary who have been targeted by forces hostile to the rule of law. A wave of violence has been reported to have taken place in Sana'a, despite a UN-brokered ceasefire which began in April and was renewed in August. Regional media sources have reported extensively on the recent kidnapping, torture and killing of Dr. Mohammed Hamran, former member of the Yemeni Supreme Court of Cassation. There have been other reports of judges being killed or injured in the court precincts, in the street and even at home. Authorities have not provided adequate protection in light of the spread of weapons in society and the general chaos of war. Judges work largely without salaries while their lives are in danger.

Although Yemen is not a member of the International Association of Judges, the IAJ has in the past "urgently asked" that all methods and influence be utilized to stop the violence against the judiciary. (Statement of IAJ President Christina Crespo, President of the International Association of Judges, Rome, February 8, 2016). It takes the opportunity to renew that call today.

The Yemen Women Judges Forum is an affiliated association of the International Association of Women Judges. We stand in solidarity with our members in Yemen and their colleagues. We wholeheartedly support the IAJ in its call to stop violence against judges and urge those in authority to provide the necessary security to protect the judges.

There can be no more important aspect of judicial independence than the right of judges to carry out their judicial functions without threat of violence. The International Association of Judges and the International Association of Women Judges join the united force of voices around the world in calling for an end to this violence.

*Tel Aviv (Israel)*

*21st of September 2022*



## 2023 ANAO Statement on Sri Lanka

INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI
PALAZZO DI GIUSTIZIA - PIAZZA CAVOUR - 00193 ROMA - ITALY

**ANAO STATEMENT ON SRI LANKA**

The Asia, Australia, North America and Oceania (ANAO) Region of the International Association of Judges (IAJ), herein expresses its deep concern about developments in Sri Lanka affecting the independence of the judiciary.

On March 3, 2023, Sri Lanka's Supreme Court issued an interim order to the Secretary, Ministry of Finance and the Attorney General, representing the Minister of Finance, preventing them from withholding funds earmarked for the 2023 local government elections through the budget passed by Parliament.

In consequence, a question of privilege has been raised in Parliament and the matter referred to the Committee on Ethics and Privilege.

Subsequently, the State Minister of Finance has requested the Deputy Speaker to advise all relevant authorities not to proceed further or take any action on the interim order of the Supreme Court until the Privileges Committee concludes its enquiry. The interim order has now been included as an agenda item of the Privileges Committee meeting due to be held on March 22, 2023 for future activities.

The United Nations Basic Principles on the independence of the judiciary call upon the State to guarantee the independence of the judiciary. It demands that all government and other institutions respect that independence.

Moreover, there is to be no inappropriate or unwarranted interference in the judicial process, and judicial decisions of the courts are not subject to review by the legislature.

The Government (Latimer House) Principles on the Three Branches of Government, November of 2003, demands that the relations between Parliament and the Judiciary be governed by respect for Parliament's primary responsibility for enacting laws on the one hand, and the Judiciary's responsibility for interpreting and applying them consistently with overarching constitutional principles and the rule of law on the other.

The ANAO Region of the IAJ has serious concerns about the consistency of the actions taken here with these fundamental principles.

It asks that Parliament consider the universally recognized primacy of the judiciary in protecting the rule of law as it goes forward.

## CC

**2022**

- Resolution on the killing of judges in Yemen
- Resolution on Guatemala
- Resolution on Tunisia

**2018**

- Resolution on updating the "Basic Principles on the Independence of the Judiciary"
- Resolution on Puerto Rico

**2017**

- Resolution on Turkey

**2016**

- Resolution of the IAJ on Turkey

**2015**

- IAJ Motion on Uruguay
- IAJ Resolution on Ukraine
- IAJ Resolution on Turkey

**2014**

- Declaration concerning Porto Rico
- Declaration concerning Guatemala
- Declaration concerning Panama
- Statement on Peru
- IAJ Resolution on Yemen
- IAJ Declaration on Iraq
- Resolution on South Africa
- Resolution of the Central Council on Timor East
- Resolution of the Central Council on Uruguay
- Resolution of the Central Council on Turkey

**2013**

- Resolution on independence of High Council Judiciary in Ukraine





**STATEMENT ON THE KILLING OF JUDGES IN YEMEN**

**BY THE INTERNATIONAL ASSOCIATION OF JUDGES and the**

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*Tel Aviv (Israel)*

*21st of September 2022*

## 2022 Resolution on Guatemala

### Resolution on Guatemala

Taking into account the institutional weakening and the crisis of independent justice in Guatemala, the International Association of Judges:

- Urges the Guatemalan authorities to comply with international guarantees and standards in the exercise of the judicial function, preventing the criminalisation without cause of high-risk judges and any other jurisdiction who have been prosecuted through the instrumentalization of the criminal process as a distorting element of judicial independence, causing the exile in the last three years of at least 24 judges and prosecutors who, through their work, sought to investigate corruption networks in the country.

- Urges the Public Prosecutor's Office to investigate the acts of intimidation and threats to which independent judges are subjected on a daily basis, through social networks, the media and other organisations established in Guatemala, with the aim of intimidating them.

- Requests the real and immediate fulfilment of the precautionary and provisional measures issued in favour of several Guatemalan judges, such as the case of judges Miguel Ángel Gálvez, Jazmín Barrios and Pablo Xitumul, issued by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights in favour of their personal integrity and their function without internal and external interferences that hinder their impartiality.

- Urges the State of Guatemala to comply with the peace accords signed in December 1996, to regulate the system for the election of Supreme Court and Appellate Justices, in accordance with international standards that guarantee judicial independence.

*Tel Aviv (Israel)*
*21st of September 2022*



## 2022 Resolution on Tunisia

### Resolution on Tunisia

The Central Council of the IAJ, gathered on the occasion of its 64th annual meeting in Tel Aviv (Israel), was informed of the situation of justice in Tunisia and unanimously adopted the following resolution.

It recalls that:

- the dissolution of the legitimate High Council of the Judiciary and its replacement by a provisional Council whose majority of members is appointed by the President of the Republic violates international standards and in particular Article 2-3 of the Universal Charter of the Judge approved by the Central Council of the IAJ in Santiago de Chile in 2017;

- the dismissal of judges by decree of the President of the Republic violates international standards and in particular articles 2-2 and 7-1 paragraph 2 of the Universal Charter of the Judge;

- the implementation of disciplinary and sometimes criminal procedures as a retaliatory measure for decisions made by judges and prosecutors violates international standards and in particular article 7-1 paragraph 3 of the Universal Charter of the Judge;

- the implementation of disciplinary procedures without notification of the charges, without the possibility to defend oneself and without a real right of appeal violates international standards and in particular article 7-1 paragraph 4 of the Universal Charter of the Judge.

In view of these elements, the Central Council gives its full support to the actions of the Association of Tunisian Judges and its leaders to defend the independence of justice and the rule of law in Tunisia.

It recalls that it is the duty of judges to defend these principles and that no action should be taken against them for this reason.

It stresses that the freedom of expression and the right of association of judges must be respected in all circumstances.

It calls on the Tunisian authorities to respect these principles and on the international authorities to use all possible means to encourage them to respect and protect Tunisian judges.

*Tel Aviv (Israel)*

*21 September 2022*

## 2018 Resolution on updating the "Basic Principles on the Independence of the Judiciary"

**INTERNATIONAL ASSOCIATION OF JUDGES**
**UNION INTERNATIONALE DES MAGISTRATS**
**UNION INTERNACIONAL DE MAGISTRADOS**
**INTERNATIONALE VEREINIGUNG DER RICHTER**
**UNIONE INTERNAZIONALE DEI MAGISTRATI**

**Palazzo di Giustizia - Piazza Cavour – 00193 ROMA - ITALY**

**RESOLUTION on**

**Updating the "Basic Principles on the Independence of the Judiciary" adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26 August to 6 September 1985 and confirmed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985**

The International Association of Judges ("the IAJ") observes first that in 2014 it decided to update its reference text the "Universal Charter of the Judge", which had not been revised since its adoption at the annual meeting of the IAJ in Taiwan in 1999.

Following that decision, a new Charter was adopted unanimously by the IAJ member associations at its annual meeting in Santiago de Chile in November 2017.

The IAJ continues to welcome the adoption by the United Nations in 1985 of the "Basic Principles on the Independence of the Judiciary."

The IAJ considers that these general principles continue to be relevant 33 years after their adoption and stresses the importance of worldwide rules designed to ensure the independence of judges and to enable judges, through the creation of associations, to defend the principles of judicial independence.

Nevertheless, the IAJ believes that some of these principles could usefully be recast and clarified, including:

- the guarantees of irremovability;
- the training of judges;
- and the distribution of cases within the courts.

The IAJ further notes that some topics which are now at the centre of the concerns of judges do not appear in these principles.

These include:
• the principles relating to the organization of justice and internal independence of the judiciary;
• the conditions necessary in order that justice may be rendered effectively;
• the guarantees on remuneration and retirement of judges;
• the creation of a bodies responsible for the recruitment, appointment, promotion and discipline of judges which are composed or constituted in a manner such as to secure their independence;
• the clarification of the ethical and deontological requirements placed on judges, in light of increased public debate and expectations.
Considering the conclusions of the international conference held in Marrakesh (Morocco) on October 17th, 2018, on the following topic : "Judicial Independence and the Implementation of the New Universal Charter", the IAJ supports calls for the undertaking of a review to update the terms of the "Basic Principles on the Independence of the Judiciary" which was adopted and confirmed in 1985.

The international Association of Judges accordingly urges the United Nations and its member governments to engage in such a review and declares its readiness to contribute to the review.

Marrakech, October 18th, 2018.

**2018 Resolution on Puerto Rico**

INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI

PALAZZO DI GIUSTIZIA - PIAZZA CAVOUR - 00193 ROMA - ITALY

## Resolution on Puerto Rico

IAJ was informed that a cut in the vested pension rights of judges is foreseen in Puerto Rico. IAJ stresses that like the remuneration of judges also their income after retirement is an essential element of their independence. The judge must receive sufficient remuneration to secure true economic independence, and, through this, his/her dignity, impartiality and independence. (Universal Charter of Judges Article 8-1) The judge has a right to retirement with an annuity or pension in accordance with his or her professional category. (Universal Charter of Judges Article 8-3). It reiterates Article 9.1 of the Declaration on minimum principles about Judiciaries and Judges (Campeche Declaration), which states: "Judges have a right of retirement receiving remuneration that corresponds with their level of responsibility, maintaining a reasonable relation with the salary corresponding to their position before retirement." IAJ therefore urges the Puerto Rican authorities to take these important requirements into account, when amending the pension system.



**2017 Resolution on Turkey**

## RÉSOLUTION DE L'UNION INTERNATIONALE DES MAGISTRATS (UIM)

**L'Union internationale des magistrats relève que:**

1500 juges et procureurs turcs sont détenus en Turquie, la plupart d'entre eux depuis plus d'un an,

L'un d'entre eux, Murat Arslan, dont l'engagement courageux pour la démocratie, les droits de l'homme et la primauté du droit dans son pays, a été récompensé par le prix Vaclav Havel des droits de l'homme,

Il est accusé d'être membre d'une organisation terroriste, alors qu'aucune preuve de cet état de fait n'a été rapportée,

La seule association de magistrats indépendante en Turquie, YARSAV, a été dissoute par le gouvernement sur la base d'un décret d'urgence, de nombreux membres de cette Association sont actuellement détenus,

Le Haut Conseil supérieur des juges et procureurs, devant normalement protéger le pouvoir judiciaire, s'est transformé en instrument du gouvernement et a décidé du renvoi des juges et des procureurs sans attendre le résultat des procédures pénales en cours portant gravement atteinte à la présomption d'innocence,

En violation de ce principe essentiel, les biens des juges ont été saisis et les familles privées des moyens de subsistance élémentaires et indispensables,

Les juges et les procureurs, qui sont restés en fonction ou ont été récemment nommés aux postes devenus vacants, sont maintenus sous pression.

Il en résulte la disparition d'un pouvoir judiciaire indépendant en Turquie.

**L'Union internationale des magistrats exhorte la Turquie à :**

- rétablir la primauté du droit dans ce pays,

- libérer les juges, les procureurs, les avocats et les autres personnes indûment détenues,

- fournir à chaque personne une procédure équitable respectant les normes internationales et européennes,

- arrêter sa propagande et retirer l'affirmation indéfendable selon laquelle serait ou soutiendrait une organisation terroriste.

Santiago, Chili 16.11.2017

## RESOLUTION OF THE INTERNATIONAL ASSOCIATION OF JUDGES (IAJ)

The International Association of Judges finds:

That 1500 Turkish judges are in detention in Turkey, most of them for more than one year.

One of them is Murat Arslan, whose courageous commitment to democracy, human rights and rule of law in his country, was awarded the Vaclav Havel Human Rights price.

He is accused of being a member of a terrorist organisation, but any evidence of this accusation against an inconvenient critic is not established.

The only independent judges association of Turkey, YARSAV, was dissolved by the government on the basis of an emergency decree and many of the members are among the judges who are detained.

The Turkish High Council of Judges and Prosecutors, instead of protecting the judiciary, turned into an instrument of the government and decided to dismiss the judges and prosecutors without waiting for the result of the criminal procedure, which infringes the presumption of innocence.

That, contrary to this principle, the assets of the judges were seized and their families were deprived of the means for basic necessities,

That the judges and prosecutors who remained in office or have been placed into the positions which have become vacant are held under inappropriate pressure which had led to the disappearance of an independent judiciary in Turkey.

**The International Association of Judges urges Turkey:**

- to reestablish the rule of law in this country,
- to free those judges , prosecutors , lawyers and others who are detained without due process,
- to provide everyone with a fair trial which upholds international and European standards, and
- to stop the unfounded propaganda that the IAJ is, or supports, a terrorist organisation.

Santiago, Chile 16.11.2017



## RESOLUCIÓN DE LA UNIÓN INTERNACIONAL DE JUECES (UIM)

La Unión Internacional de Magistrados tomó conocimiento que

1500 jueces están detenidos en Turquía, la mayoría de ellos hace más de un año.

Uno de ellos es Murat Arslan, cuyo comprometido compromiso con la democracia, los derechos humanos y el estado de derecho en su país fue galardonado con el Premio Vaclav Havel.

Sigue acusado de ser miembro de una organización terrorista aún que no se ha presentado ninguna evidencia para esta denuncia contra alguien que es un crítico inconveniente

La única asociación de jueces independientes de Turquía YARSAV fue disuelta por el Gobierno sobre la base de un decreto de emergencia y muchos de sus miembros se encuentran aún entre los detenidos,

El Consejo Superior de Jueces y Fiscales, en lugar de proteger al poder judicial, se convirtió en un instrumento del Gobierno y decidió por la exoneración de jueces y fiscales sin esperar el resultado del procedimiento penal lo que claramente infringe la presunción de inocencia,
oponiéndose también a este principio, se incautaron todos los bienes de los jueces y se privaron a las familias del mínimo que asegure su subsistencia,

Los jueces y fiscales que permanecieron en el cargo o que han sido puestos recientemente en puestos vacantes autorizados se mantienen bajo una indebida presión pelo que se puede afirmar que no existe más un poder judicial independiente en Turquía.

**La Unión Internacional de Magistrados insta a Turquía para que :**

- restablezca el estado de derecho en este país,
- libere a los jueces, fiscales, abogados y otras personas que están indebidamente detenidas,
- proporcione a cada uno de estos cuerpos profesionales un procedimiento justo que defienda los estándares internacionales y europeos
- y que no continúe su propaganda retirando la afirmación insostenible que UIM es, o apoya, una organización terrorista.

Santiago, Chile 16.11.2017

## 2016 Resolution of the IAJ on Turkey

### Resolution of the International Association of Judges (IAJ)

**RECOGNISING** that on 15 July 2016 Turkey suffered a serious military attack on its democratic institutions in which almost three hundred of its people died and many more were seriously injured and that this event is to be strongly condemned;

**UNDERLINING** that those whose involvement in this attempted coup d'état has been properly proved should be held accountable;

**WELCOMING** the fact that all political parties and the Turkish people have voiced strong support for democracy;

**RECALLING** that a basic pillar of democracy is the rule of law and a commitment to the safeguarding of human rights, such as those enshrined in the European Convention of Human Rights (EHCR), to which Turkey is a party;

**AFFIRMING** that any emergency law and likewise any suspension of the European Convention of Human Rights, under Article 15, must be kept within proper limits, and in particular that any restrictions on the citizens` rights and liberties must be only such as are absolutely necessary to address the extraordinary situation;

**STRESSING STRONGLY** that even in extraordinary circumstances it remains necessary to observe fundamental procedural principles such as the right to access to a lawyer; or the necessity that for any criminal proceedings there be at least reasonable, concrete grounds of suspicion of an involvement in a crime; and the universally accepted fundamental principle that even those who may have committed a crime have an indispensable right to a fair trial;

**THE INTERNATIONAL ASSOCIATION OF JUDGES -**

**notes with concern**

- that thousands of Turkish judges and prosecutors have been arrested and dismissed without any adequate procedure;
- that their property has been seized;
- that frequently the evidence, if any, of membership of a terrorist organization offered by the authorities is at best flimsy;
- that Turkish legislation regarding terrorist organizations is so far-reaching in its effects as to be incompatible with international standards and is therefore criticized by international institutions;
- that many complaints are made about the situation of detainees in detention centres, including complaints of torture; and

**therefore appeals to the Turkish authorities**

- to end the state of emergency; to re-establish the procedural guarantees of a fair trial; immediately to end all violations of the rights specified as non-derogable under Article 15 of the European Convention on Human Rights; and to refrain from any measures derogating disproportionately from the obligations of Turkey under the provisions of that Convention.
- To respect the independence of the judiciary and to cease influencing courts and especially the High Council of Judges and Prosecutors;
- to restore the property of judges and prosecutors and their families , which was seized under emergency decree;
- to guarantee that the European Prison Rules (CM Rec(2006)2 ) are observed in all detention centres and to hold accountable those who have violated them;
- to reverse the dissolution of YARSAV, the only independent association of Turkish judges, the dissolution of which is contrary to the internationally accepted principle that judicial office holders have the right to form, and be members of, a professional association of judges; and

**urges the international community, including in particular the members of the United Nations, the Council of Europe and the European Union**

- to persuade the Republic of Turkey of the urgent need to respond to the appeals to its authorities made in this resolution and to afford support to Turkey in meeting that need;
- to remind the government of the Republic of Turkey of its need to observe its obligations under the Turkish constitution;
- to establish a commission of independent experts to examine the current situation in Turkey regarding fundamental rights and particularly whether the measures taken pursuant to the emergency decree follow the principle of proportionality, the International Association of Judges being willing to participate in that commission, if desired; and
- to permit independent observers to follow any criminal proceedings brought against Turkish judges and prosecutors.

## Résolution de l'Union Internationale des Magistrats (UIM)

**RECONNAISSANT** que le 15 juillet 2016 la Turquie a été victime d'une sérieuse attaque militaire à l'encontre de ses institutions démocratiques, au cours de laquelle plus de 300 personnes ont été tuées et bien davantage blessées et condamnant fermement ces événements ;

**SOULIGNANT** que ceux dont l'implication dans ce coup d'état a été prouvé devront en être tenus pour responsables ;

**ACCUEILLANT** favorablement le fait que les partis politiques et le peuple turc ait manifesté fortement son soutien à la démocratie ;

**RAPPELANT** les piliers de la démocratie que sont l'état de droit et l'engagement à sauvegarder les droits de l'homme tels que consacrés par la Convention Européenne des Droits de l'Homme (CEDH) à laquelle la Turquie est partie prenante ;

**AFFIRMANT** qu'aucune loi déclarant l'état d'urgence, ni aucune suspension, dans le cadre de l'article 15 de la Convention Européenne des Droits de l'Homme ne peuvent être sans limites et qu'en particulier les restrictions aux droits et libertés des citoyens ne peuvent être décidées que si elles sont absolument nécessaires pour remédier à une situation exceptionnelle

**SOULIGNANT FORTEMENT** que même dans des circonstances exceptionnelles, il reste nécessaire de respecter les principes fondamentaux de la procédure tels que le droit d'accès à un avocat ; ou la nécessité que, pour toute procédure pénale il y ait au minimum des motifs concrets raisonnables de soupçon d'une implication dans un crime ; et le principe fondamental universellement reconnu selon lequel même ceux qui auraient commis un crime ont un droit à un procès équitable ;

**L'UNION INTERNATIONALE DES MAGISTRATS**

**Note avec préoccupation que :**

- des milliers de juges et procureurs turcs ont été arrêtés et démis de leurs fonctions sans aucun respect des procédures nécessaires ;
- leurs biens ont été saisis ;
- le plus souvent les éléments de preuve de l'appartenance à une organisation terroriste offerte par les autorités sont, au mieux, fragiles ;
- la législation turque relative à des organisations terroristes est si excessive dans ses effets qu'elle est incompatible avec les normes internationales et est donc critiquée par les institutions internationales ;
- de nombreuses plaintes ont été faites au sujet de la situation des détenus dans les centres de détention, y compris des accusations de torture ; et

**en appelle donc aux autorités turques pour qu'elles**

- mettent fin à l'état d'urgence ; rétablissent les garanties procédurales d'un procès équitable ; mettent immédiatement un terme à toutes les violations des droits spécifiés comme intangibles en vertu de l'article 15 de la Convention européenne des droits de l'homme ; et ne prennent aucune mesure dérogeant de façon disproportionnée aux obligations de la Turquie en vertu des dispositions de cette convention ;
- respectent l'indépendance du pouvoir judiciaire et cessent d'influencer les tribunaux et en particulier le Haut Conseil des juges et des procureurs ;
- restaurent la propriété des juges, des procureurs et de leurs familles, qui a été saisi en vertu du décret d'urgence ;
- garantissent que les Règles pénitentiaires européennes (CM Rec (2006 2)) soient observées dans tous les centres de détention et demandent des comptes à ceux qui les ont violés ;
- annulent la dissolution de YARSAV, la seule association indépendante des juges turcs, cette dissolution étant contraire au principe internationalement accepté que les titulaires de fonctions judiciaires ont le droit de former et être membres d'une association professionnelle des juges; et

**demande instamment à la communauté internationale, en particulier aux membres de l'Organisation des Nations Unies, du Conseil de l'Europe et de l'Union européenne**

- de persuader la République de Turquie de la nécessité urgente de répondre aux appels à ses autorités formulées ci-dessus dans la présente résolution et proposer un soutien à la Turquie pour répondre à ce besoin ;
- de rappeler au gouvernement de la République de Turquie de son obligation de respecter les règles imposées par la constitution turque ;
- de créer une commission d'experts indépendants pour examiner la situation actuelle en Turquie en ce qui concerne les droits fondamentaux, et en particulier pour s'assurer que les mesures prises en application du décret d'urgence suivent le principe de proportionnalité, l'Association internationale des juges étant disposée à participer à cette commission; et
- de permettre aux observateurs indépendants de suivre toutes procédures pénales engagées à l'encontre des juges et des procureurs turcs.

## 2015 IAJ Motion on Uruguay

IAJ·UIM International Association of Judges Union Internationale des Magistrats

MOTION ON URUGUAY

The International Association of Judges expresses its deep concern about the current situation of the Judges of Uruguay.

The IAJ directs the President to write to the Government of Uruguay requesting that it undertakes to negotiate a resolution of the dispute that has lasted 5 years already.

The IAJ also requests the Government to comply with the judgements of the Supreme Court and respect the Constitution and the democratic regime which it establishes and the principle of equality and separation of powers.



## 2015 IAJ Resolution on Ukraine

IAJ·UIM International Association of Judges Union Internationale des Magistrats

RESOLUTION ON UKRAINE

At its meeting in Barcelona on October 8th, 2015 the International Association of Judges was informed about a further deterioration of the situation of judges in Ukraine.

As already pointed out in the Resolution of the European Association of Judges (EAJ) of May 17th, 2014, the exceptional circumstances which permit of a lustration do not apply in Ukraine. The Ukrainian legislature has provided for a lustration procedure on three occasions to date i.e., the Law on Restoring the Trust in the Judiciary, the Law on Cleansing of Government and the transitional provisions of the Law on Fair Trial. Notwithstanding that, there is now a further, wider reaching proposal with the potential for even more dramatic effects. This proposal provides that all Ukrainian Judges will lose their office and will have to apply for re-appointment. This is a gross attack on the independence of judges and is in clear conflict with international law and standards, and flagrantly disregards the principles flowing from judgment of the ECHR in Volkov v. Ukraine and other cases.

The International Association of Judges has been informed about the continuing failure of the authorities in Ukraine, particularly the police force and prosecuting authorities, to take appropriate and adequate steps to protect judges and their families from intimidating violence and threats, and to react appropriately when such incidents have occurred. The concerns of the European Association of Judges on this issue were conveyed to the Ukrainian authorities in its Resolution of the 16th of May 2015.

The International Association of Judges therefore urges the Ukrainian authorities

a) not to proceed with any lustration measure against judges; and

b) to provide effective protection for judges and their families against violence and threats, and to ensure the prosecution of all who resort to such violence or threats.

The IAJ will make the relevant international authorities and particularly the Council of Europe aware of the issues mentioned above.

## 2015 IAJ Resolution on Turkey

IAJ·UIM International Association of Judges
Union Internationale des Magistrats

RESOLUTION
ON THE SITUATION OF THE JUDICIARY IN TURKEY

At its meeting in Barcelona on October 8th 2015, the International Association of Judges (IAJ) considered –

- the arbitrary transfer of thousands of Turkish judges without their consent;
- the suspension of Turkish judges without reason and without effective remedy;
- the detention and arrest of Turkish judges on the ground of their professional activities, and without having regard to the principles of the due process;
- the use of disciplinary measures against Turkish judges without any foundation for doing so.

These measures violate international standards of judicial independence.

According to Recommendation Rec (2010) 12, of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, Point 25, judges are free to form associations whose activities are confined to defending independence and their professional interests.

According to Recommendation CM/Rec (2010) 12, security of tenure and irremovability of judges are key elements of the independence of judges. (Article 49). In addition, a judge should not receive a new appointment or be moved to another judicial office without consenting to it (Article 52). Furthermore, a permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions (Article 50).

The suspension from office and the arrest and detention of judges without proper grounds, regard to principles of due process and effective remedy, are self evidently serious infringements of the independence of the Turkish judiciary.

Of utmost concern to the IAJ is, in particular, the removal, without his consent, of the Chairman of YARSAV from his post as Judge Rapporteur of the Constitutional Court of the Turkish Republic without any evident reason other than his chairmanship of YARSAV. This action by the Turkish authorities not only offends the international standards on the independence of the judiciary referred to above but also infringes the right of judges freely to form a professional association and to participate in the association (Point 25 of the above mentioned Recommendation).

Accordingly, the IAJ calls upon the authorities of the Republic of Turkey to desist immediately from their continuing failures to respect the independence of the Turkish judiciary and to secure that independence by complying fully with the relevant international standards.

## 2014 Declaration concerning Porto Rico

IAJ·UIM International Association of Judges
Union Internationale des Magistrats

### RESOLUTION CONCERNING PORTO RICO

The Central Council of the International Association of Judges recognizes the difficulties currently facing the Judiciary in Puerto Rico and extends its support to their Judges in its struggle with the actions taken by the Chief Justice for removing judges from their bench with the allegations of corruption published by the press and without formal charges presented against three judges in violation of due process. This actions taken by the court are an attack to the judicial independence of judges within the judiciary power.

Español

El Consejo Central de la Union Internacional de Magistrados reconoce las dificultades por las que atraviesa la Judicatura Puertorriqueña y extiende su apoyo a los jueces puertorriqueños en su lucha por las acciones tomada por la Jueza Presidente al remover de sus cargos solo con alegaciones de corrupción mencionadas en la prensa sin evidencia alguna de tal conducta ni presentación de cargos o de querellas, todo ello en violación al debido proceso de ley. Estas acciones tomadas por la corte son in ataque directo a la Independencia Judicial de sus jueces por el mismo Poder Judicial.

Français

Le Conseil Central de l'Union Internationale des Magistrats reconnaît les difficultés auxquelles est confronté actuellement le Pouvoir Judiciaire du Porto Rico et étend son soutien aux juges portoricains dans leur lutte contre les mesures prises par le Juge Président de les retirer de leurs fonctions par des allégations de corruption mentionnées dans la presse sans aucune preuve et sans aucune accusation formelle, le tout en violation de l'application régulière de la loi. Ces mesures prises par le tribunal sont une attaque directe à l'indépendance judiciaire des juges par le Pouvoir Judiciaire lui-même.



## 2014 Declaration concerning Guatemala

IAJ·UIM International Association of Judges
Union Internationale des Magistrats

### DECLARACION DE LA UNION INTERNACIONAL DE MAGISTRADOS RESPECTO A LA SITUACION DE GUATEMALA

**Considerando** nuestro compromiso con los fundamentos del Estado de Derecho, el fortalecimiento de la Democracia mediante la garantía de la Independencia judicial y el respeto de los Derechos Humanos, y atendiendo a la coyuntura actual que atraviesa el organismo judicial en Guatemala;

**Manifestamos** nuestra preocupación por el desarrollo y los resultados de los recientes procesos de selección para los y las integrantes de la Corte Suprema de Justicia y de las Cortes de Apelaciones de Guatemala, debido a que tenemos noticia, a través de varias organizaciones internacionales, y de los pronunciamientos hechos por la Comisión Interamericana de Derechos Humanos (CIDH) y por la Relatora Especial de las Naciones Unidas sobre la independencia de magistrados y abogados, que señalan que los citados procesos de selección no han respetado los internacionales ni las normas nacionales al efecto dictadas, lo cual pone en duda la legitimidad de estos procesos y arriesga el principio de independencia judicial.

Los estándares internacionales en materia de selección de autoridades judiciales, derivados de tratados internacionales, previstos además en los Principios Básicos Relativos a la Independencia de la Judicatura de ONU y en el Estatuto de la Unión Internacional de Magistrados, así como desarrollados ampliamente en el Informe sobre Garantías para la Independencia de las y los Operadores de Justicia de la Comisión Interamericana de Derechos Humanos (CIDH), establecen que estos procesos deben orientarse a la evaluación de los méritos personales y profesionales de candidatas y candidatos, aplicando criterios objetivos de idoneidad técnica y ética previamente establecidos, para así evitar la discrecionalidad de quienes intervienen en el nombramiento.

Con base en los principios indicados, la Corte de Constitucionalidad de Guatemala, en resolución 2143-2014 del 13 de junio de 2014, indicó que para el cumplimiento del artículo 113 de la Constitución Guatemalteca (que se refiere a la obligatoriedad de seleccionar a candidatos en base a sus méritos, capacidad, idoneidad y honradez) los comisionados integrantes de las comisiones de postulación (órganos responsables de seleccionar una lista de candidatos (as) elegibles para su elección en el Congreso) deberían efectuar una evaluación objetiva y razonable en forma individual de cada participante. Este principio básico fue omitido en los procesos, ya que no se realizaron entrevistas para los (as) candidatos (as) de Cortes de Apelación, no se justificó la

desestimación de las tachas que se presentaron contra varios de los aspirantes, ni se analizó información sustantiva sobre la capacidad técnica de los postulantes.

Una de las consecuencias de las irregularidades denunciadas es que hubo una escasa designación de jueces y juezas de experiencia en la administración de justicia, lo cual denota una inadecuada estructura de aplicación de la carrera judicial. Así por ejemplo de la totalidad de magistrados y magistradas que resultaron electas, solamente 33% tiene alguna experiencia judicial previa y de éstos, únicamente 10% tienen Carrera Judicial (egresados de programas de formación inicial impartidos por la Escuela de Estudios Judiciales). Cabe destacar que una magistrada electa renunció por la ilegitimidad del procedimiento y por presiones recibidas para resultar favorecida en la elección.

Asimismo, manifestamos nuestra preocupación por el uso del Tribunal de Honor del Colegio de Abogados (órgano gremial) para sancionar a juezas en el ejercicio de actuaciones jurisdiccionales, tal como ocurrió en el caso de la jueza Yassmín Barrios.

Por lo anterior, hacemos exhorto a las autoridades del Estado de Guatemala por la Defensa de la Independencia Judicial, así como instamos a los diferentes grupos y organizaciones políticas, sociales y económicas, a respetar y hacer efectiva la Independencia de la Judicatura en este país.



IAJ·UIM International Association of Judges
Union Internationale des Magistrats

**STATEMENT OF THE INTERNATIONAL ASSOCIATION OF JUDGES REGARDING THE APPOINTMENT OF JUDGES IN GUATEMALA**

**Considering** the IAJ's commitment to the rule of law, to strengthening democracy by advancing judicial independence and respect for human rights, and considering the situation currently faced by the judiciary in Guatemala;

**We note with concern** the conduct and result of the recent round of appointments to the Guatemalan Supreme Court and Courts of Appeal. The IAJ has learned through several international organizations, and also through statements made by the Inter-American Commission on Human Rights (IACHR) and the UN Special Rapporteur on the independence of judges and lawyers, that the recent selection process did not comply with the relevant international and national rules. This lack of compliance casts doubt on the legitimacy of the process and, in turn, threatens the principle of judicial independence.

International standards on the appointment of judges are founded on multilateral treaties to which Guatemala is party. These standards are also set down in the UN's Basic Principles on the Independence of the Judiciary, as well as in the Statute of the International Association of Judges. Further, the Report on Guarantees for the Independence of the Judicial Officers published by the Inter-American Commission on Human Rights (IACHR) states that the process to appoint judges should be based on objective criteria of technical competence and ethical probity. All relevant international standards stipulate that the appointment process should focus on a candidate's personal and professional merit, and that the application of discretionary powers should be discouraged.

The Constitutional Court of Guatemala echoed these principles in its resolution number 2143 of 13 June 2014, which set the membership of the nominating committees responsible for shortlisting applicants for Supreme Court and Courts of Appeal vacancies, to be approved (i.e., elected) by the legislature. The ruling notes that the nominating committees should select candidates on the basis of merit, competence, suitability and trustworthiness, as set down in Article 113 of the Guatemalan Constitution. Yet this directive was disregarded in the actual appointment process. No candidate was interviewed for the Courts of Appeals vacancy; complaints raised against some of the candidates were dismissed without explanation; applicants' qualifications and background were not examined in any meaningful detail.

One of the negative consequences of the alleged irregularities is that only some of the appointed judges had direct experience in the administration of justice, which highlights the inadequate structure of the judicial career. By way of example, of the judges and

magistrates who were elected in the most recent round of appointments, only 33 per cent have prior judicial experience. Of those who do have prior experience, only 10 per cent have graduated from initial training programs offered by the College of Judicial Studies. Of note in this regard is the case of a female judge who was elected by the legislature, but who resigned citing the irregularity of the appointment process.

The IAJ is also concerned about reports that the Court of Honor of the Lawyers' Association (a union-like body) is being used to reprimand judges engaged in the normal conduct of legal proceedings, as in the case of Judge Yassmin Barrios.

The IAJ urges the Guatemalan authorities to enforce judicial independence, and appeals to political and civil society groups to uphold this principle.



IAJ·UIM International Association of Judges
Union Internationale des Magistrats

**DÉCLARATION DE L' UNION INTERNACIONALE DE MAGISTRATS SUR LA SITUACION DU GUATEMALA**

Compte tenu de notre engagement envers les principes de l'État de Droit, le renforcement de la démocratie en veillant à l'indépendance judiciaire et au respect des droits de l'homme, et en considerant la situation actuelle vécue par le pouvoir judiciaire au Guatemala;

Nous exprimons notre inquiétude concernant le développement et les résultats des derniers processus d'élection des membres de la Cour Suprême de Justice et des Cours d'Appels du Guatemala. Nous avons appris par plusieurs organisations internationales, et aussi à travers les déclarations faites par la Commission Interaméricaine des Droits de l'Homme (CIDH) et par le Rapporteur spécial des Nations Unies sur l'indépendance des juges et des avocats que les processus de sélection mentionnés ci-dessus n'ont pas respecté les normes internationales ni nationales, ce qui jette un doute sur la légitimité de ces processus et menace le principe de l'indépendance judiciaire.

Les normes internationales de sélection des juges sont fondées dans des traités internationaux et également définies dans les Principes fondamentaux relatifs à l'indépendance de la magistrature de l'ONU et sur le Statut de l'Union Internationale des Magistrats. Ces normes ont aussi été largement développées dans le Rapport sur les garanties pour l'indépendance des huissiers de justice publié par la Commission Interaméricaine des Droits de l'Homme (CIDH) et établissent que ces processus doivent viser à évaluer les mérites personnels et professionnels des candidats en appliquant des critères objectifs de compétence technique et de l'éthique, précédemment établis, pour éviter l'application des pouvoirs discrétionnaires par ceux qui sont impliqués dans la nomination.

Basée sur les principes ci-dessus, la Cour Constitutionnelle du Guatemala dans sa résolution 2143-2014 du 13 Juin 2014 a indiqué que, conformément à l'article 113 de la Constitution guatémaltèque – qui se réfère à l'obligation de la sélection des candidats fondée sur le mérite, la capacité, la fiabilité et l'honnêteté –, les membres des Comissions de Postulations (responsables de la sélection d'une liste de candidats éligibles au Congrès) devraient procéder à une évaluation objective et raisonnable de chaque participant. Pourtant ce principe de base a été omis dans le processus, puisque aucun candidat a été interviewé pour les Cours d'Appels, des griefs soulevés contre certains des candidats ont été rejetés sans explication et les informations sur la capacité technique des candidats n'ont pas a été analysées en détail.

L'une des conséquences des irrégularités présumées, c'est qu'il y avait un nombre limité de juges ayant des expériences directes dans l'administration de la justice, ce qui met en évidence la structure insuffisante de la carrière judiciaire. À titre d'exemple, parmi les juges et les magistrats qui ont été élus, seulement 33% ont une expérience judiciaire préalable et de ce nombre, seulement 10% ont carrière judiciaire (diplômés de programmes de formation initiale offerts par le Collège d'études juridiques). Il faut noter qu'une juge élue a démissionné après avoir dénoncé des irrégularités dans le processus de nomination.



Nous exprimons, également, notre préoccupation au sujet de l'utilisation de la Cour d'Honneur de l'Association du Barreau (conseil syndical) pour sanctionner les juges engagés dans le déroulement de la procédure judiciaire, comme dans le cas du juge Yassmin Barrios.

Par conséquent, nous exhortons les autorités de l'État du Guatemala à défendre l'indépendance de la magistrature et faisons appel aux différents groupes et organisations politiques, sociales et économiques de respecter et de contribuer à l'indépendance de la magistrature dans ce pays.

2014 Declaration concerning Panama

IAJ·UIM International Association of Judges
Union Internationale des Magistrats

**DECLARACIÓN DE FOZ DO IGUAZÚ (BRASIL) RESPECTO A LA SITUACIÓN DE LA REPÚBLICA DE PANAMÁ**

El GRUPO IBEROAMERICANO de la UNIÓN INTERNACIONAL DE MAGISTRADOS (UIM) reunido en Asamblea General Ordinaria, en Foz Do Iguazu Brasil, el día 9 de noviembre de 2014, en conocimiento de la situación que atraviesan los Jueces/Juezas/Magistrados/Magistradas de la República de Panamá y en cumplimiento de los principios que rigen nuestra entidad consideran:

– Que el Grupo Iberoamericano de la Unión Internacional de Magistrados, forma parte de esta organización que aglutina las asociaciones nacionales de jueces de los países iberoamericanos miembros, y que tiene como uno de sus principales objetivos, la defensa de la independencia permanente, real y efectiva del Poder Judicial, que constituye uno de los pilares de la forma democrática de gobierno.
– Que la estabilidad de los Jueces/Juezas/Magistrados/Magistradas y su inamovilidad son elementos esenciales de independencia de la judicatura; así como lo es, la intangibilidad de sus resoluciones.
– Que la defensa de la dignidad y el prestigio del Poder Judicial y de sus miembros es un compromiso esencial de la UIM por cuanto resulta indispensable para la función jurisdiccional y el Estado de Derecho.

**CONSIDERANDO:**

Que: La Asociación Panameña de Magistrados y Jueces (ASPAMAJ) ha puesto en conocimiento, la actitud reiterada y amenazante de grupos de presión externos a la judicatura, que se valen de denuncias penales y quejas administrativas contra los administradores/administradoras de justicia, como instrumento de intimidación y amedrentamiento a los juzgadores y juzgadoras, en su labor de proferir resoluciones judiciales.

Que: Los mecanismos de presión externos pretenden socavar la independencia de los Jueces/Juezas/Magistrados/Magistradas, en su deber de impartir justicia bajo el imperio del derecho y sin miramiento a la afectación o no, de intereses particulares, incide de manera directa, en la preservación del Estado de Derecho, condición fundamental para garantizar la libertad y la justicia de los ciudadanos y ciudadanas.

**DECLARA:**

**PRIMERO:** Que resulta un imperativo de independencia judicial, que los Magistrados/Magistradas/Jueces/Juezas trabajen libres de cualquier presión o apariencia de presión, tanto de fuentes externas como internas.
**SEGUNDO:** Que la independencia judicial, la inamovilidad de los Magistrados/Magistradas/Jueces/Juezas y el respeto a sus decisiones jurisdiccionales apegada al derecho y a la Constitución Política, son elementos esenciales e intrísecos de una cultura que promueva la verdadera independencia de los administradores y administradoras de justicia, únicamente sometidos al cumplimiento de la Ley.

**TERCERO:** Que los medios de comunicación forman parte del engranaje social y político que, dentro del respeto a los principios éticos de su actividad y del giro natural de su derecho a informar, con objetividad e imparcialidad, deben alejar ese poder de comunicación de formas soterradas de presión, a los miembros del Poder Judicial; y menos aún, deben convertirse en tribunas ad hoc de causas judiciales a ser debatidas y surtidas a lo interno de los estamentos competentes.

**CUARTO:** Rechazar enérgicamente cualquier injerencia de fuerzas o poderes ejercidos tanto a lo interno como a lo externo del Órgano Judicial que pretendan menoscabar la independencia judicial; logrando así preservar las aspiraciones ciudadanas de que los operadores y operadoras de justicia, cumplan con su sagrada misión de administrarla con honestidad, independencia e imparcialidad, cualidades que garantizan efectivamente, el Principio de Legalidad, los Derechos Constitucionales de las personas y de los bienes, que propician indefectiblemente, la seguridad jurídica y la paz social.

IAJ·UIM International Association of Judges
Union Internationale des Magistrats

**Déclaration de Foz do Iguaçu (Brésil) concernant la situation de la République du Panama**

Le Groupe Ibéro-américain de l'Union Internationale de Magistrats (UIM) lors de l'Assemblée Générale Ordinaire, réalisée à Foz do Iguaçu au Brésil, le 9 novembre 2014, ayant pris connaissance de la situation actuelle des juges/magistrats de la République du Panama et en conformité avec les principes qui régissent notre institution considère que:

— le Groupe Ibéro-américain de l'Union Internationale des Magistrats fait partie de cette organisation qui regroupe des associations nationales de magistrats des pays ibéro-américain membres, et dont l'un de ses principaux objectifs est la sauvegarde de l'indépendance continue, réelle et efficace du Pouvoir Judiciaire, celui qui est l'un des piliers d'un gouvernement démocratique.

— la stabilité des juges/ magistrats et leur inamovibilité sont des éléments essentiels de l'indépendance du Pouvoir Judiciaire ; ainsi que l'inviolabilité de leurs résolutions.

— la défense de la dignité et du prestige du Pouvoir Judiciaire et de ses membres est un engagement essentiel de l'UIM, car il est essentiel pour la fonction juridictionnelle et la primauté du droit.

Ayant considéré:

— Que l'Association Panaméenne de Magistrats et de Juges (ASPAMAJ) a informé des actions itératives et menaçantes de groupes de pression extérieurs à la magistrature, qui utilisent des accusations criminelles ou de réclamations administratives contre les administrateurs/administratrices de la justice, en tant qu'instrument d'intimidation des juges dans leur travail à prononcer des résolutions judiciaires.

— Que les mécanismes de pression externes cherchent à saper l'indépendance des juges / magistrats dans leur devoir de rendre justice en vertu de la règle de droit et sans égard à la participation ou non de l'intérêt particulier, ce qui affecte directement la préservation de la primauté du droit, fondamental pour assurer la liberté et la justice pour les citoyens.

Déclare:

PREMIER: qu'il est impératif pour l'indépendance judiciaire que les juges / magistrats travaillent libres de toute pression ou menace tacite, qu'elles soient internes ou externes.

DEUXIÈME: que l'indépendance judiciaire, l'inamovibilité des juges / magistrats et le respect de leurs décisions judiciaires conformément à la loi et à la Constitution Politique sont des éléments essentiels d'une culture qui favorise la véritable indépendance des administrateurs et des administratrices de la justice, soumis uniquement au respect de la Loi.

TROISIÈME: Que les médias font partie de l'engrenage social et politique et qui, tout en respectant les principes éthiques de leur activité et leur droit d'informer, objectivement et impartialement, doivent supprimer des pouvoirs de communication les différentes formes de pression tacite contre les membres du Pouvoir Judiciaire; et sous aucun prétexte doivent devenir des tribunes ad hoc des questions judiciaires qui doivent être discutées en interne par les instances compétentes.

QUATRIÈME: qu'il faut rejeter fermement toute ingérence de forces ou de pouvoirs exercés à la fois interne et externe au Pouvoir Judiciaire et qui cherchent à saper l'indépendance judiciaire; afin de préserver les aspirations des citoyens pour que les autorités judiciaires accomplissent leur mission sacrée d'administrer avec honnêteté, indépendance et impartialité – qualités qui garantissent effectivement le principe de légalité, les droits constitutionnels des personnes et des biens, et qui conduisent indubitablement à la sécurité juridique et à la paix sociale.

2014 Statement on Peru

IAJ·UIM International Association of Judges
Union Internationale des Magistrats

## STATEMENT FROM THE INTERNATIONAL ASSOCIATION OF JUDGES REGARDING PERUVIAN JUDGES' PETITION TO THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The delegates of the National Magistrates Association of Peru reported that the Executive branch of the Peruvian State violates the principles underlying the constitutional and democratic rule of law in relation to the Balance of Powers and Judicial Independence, by failing to comply with the Political Constitution of Peru and the Organic Law of the Judiciary. This law states that it is the duty of the President to comply with and enforce laws and judgments with res judicata. The violation relates specifically to the refusal of the Executive to match judges' salaries with that of officeholders of comparable rank employed by the Executive branch.

The Peruvian delegates report that, on 12 December 2013, the Peruvian Constitutional Tribunal ruled expressly and emphatically that judges have a right to have their remuneration readjusted, as per the Peruvian Constitution. This judgment is the second such judgment to come out of a **jurisdictional challenge** brought by the Executive against the Judiciary and Judges.

Far from fulfilling this second constitutional judgment, the Executive acted in coordination with the legislature to enact Law 30125. This new piece of legislation specifically amends Article 186 of the Organic Law of the Judicial Power of Peru – the cornerstone of the Constitutional Court's judgment. The enactment of this amendment prompted the National Magistrates Association of Peru to file a complaint with the Inter-American Commission on Human Rights, citing the Peruvian Executive's systematic refusal to abide by and comply with the rulings issued by the Judicial Power and Constitutional Court. The complaint noted that in refusing to adjust the judges' salaries, the government of Peru violated the rights enshrined in articles 1, 8, 21 and 25 of the Convention. The complaint references the failure of the Peruvian State to abide by judgments issued by its own judiciary and domestic Constitutional Court, despite the fact the rulings are res judicata. The breach is exacerbated by the Government's conduct during the trial, in particular the enactment of the new Law 30125.

The International Association of Judges (IAJ) gathered at its 57th Annual Meeting in Foz Do Iguaçu, Brazil, condemns in the strongest possible terms any action that amounts to an attack on the independence of judges and the judiciary.

The Declaration of Minimum Principles on the Independence of the Judiciary in Latin America (2014) provides that the judge must be adequately remunerated to secure true economic independence, taking into account the dignity of her office, and that such remuneration must be sufficient to meet her personal and her family's needs. The remuneration must not depend on an assessment of the judge's work and must not be reduced, under any circumstances, during the term of the appointment.

Given these facts, the International Association of Judges requests that the Honorable Inter-American Commission on Human Rights:

a. Assign the petition filed by the National Association of Magistrates of Peru **priority per saltum**, as laid down in Article 29 of the Regulations of the Commission, noting that
   i. Any delays would hinder the effectiveness of the petition, and
   ii. A decision from the Commission to remedy the serious structural lack of protection for the principles of independence of the judiciary and access to justice is critical to Peruvian citizens' enjoyment of their full human rights.

b. Grant the National Magistrates Association of Peru **a Preliminary Hearing** at its next regular session, and convenes a meeting with the Peruvian Executive such that the Commission can assist the two parties in finding a solution.

Foz do Iguaçu, 11 November, 2014.

IAJ·UIM International Association of Judges
Union Internationale des Magistrats

## PRONUNCIAMIENTO DE LA UNION INTERNACIONAL DE MAGISTRADOS RESPECTO A LA PETICIÓN A LA COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS

Los Delegados de La Asociación Nacional de Magistrados del Perú, nos han informado, que el Poder Ejecutivo del Estado Peruano, vulnera los principios que fundamentan el Estado Constitucional y Democrático de Derecho (Separación, Equilibrio de Poderes e Independencia Judicial), al no cumplir con la Constitución Política del Perú y La Ley Orgánica del Poder Judicial, que establecen que es deber del Presidente de la República cumplir y hacer cumplir Las Leyes y las Sentencias con autoridad de cosa juzgada.

Precisan que el 12 de Diciembre de 2013, obtuvieron por segunda vez Sentencia favorable pronunciada por el Tribunal Constitucional Peruano, en el proceso competencial instaurado por el Poder Ejecutivo contra El Poder Judicial y Los Magistrados, estableciéndose de manera expresa y enfática en dicha sentencia constitucional, que el derecho a la homologación de las remuneraciones de la magistrados peruanos es parte del **Bloque de Constitucionalidad.**

Lejos de cumplir con la segunda sentencia prolada por el Tribunal Constitucional peruano, el mismo día en coordinación con el Poder Legislativo, ha promulgado la Ley 30125, que modifica precisamente el artículo 186° de la Ley Orgánica del Poder Judicial del Perú, que mediante sentencia el Tribunal Constitucional está ordenando que se cumpla, lo que ha motivado que la Asociación de Magistrados recurra a la Comisión Interamericana de Derechos Humanos, ante la negativa sistemática del Poder Ejecutivo de acatar y cumplir con las sentencias expedidas por el Poder Judicial y El Tribunal Constitucional en favor de los magistrados y debido a la violación por parte del gobierno del Perú de los derechos de las y los magistrados que se encuentran consagrados en los artículos 1°, 8°, 21° y 25° de la Convención. Petición que se refiere al incumplimiento por parte del Estado peruano de lo ordenado en sentencias judiciales expedidas por su propio Poder Judicial y el Tribunal Constitucional, no obstante que éstas pasaron en autoridad de cosa juzgada, situación que se ve agravada con la conducta del Gobierno al interior del proceso en etapa de ejecución, al sostener temerariamente que al promulgarse la nueva ley 30125, hay sustracción de la materia.

La Unión Internacional de Magistrados (UIM), reunida en la Ciudad de Foz Do Iguazu- Brasil, con ocasión de la 57° Reunión Anual de LA UNION INTERNACIONAL DE MAGISTRADOS (UIM), deplora y rechaza toda acción que signifique un atentado contra la Independencia de los Poderes Judiciales y de los magistrados.

La Declaración de Principios Mínimos sobre La Independencia de los Poderes Judiciales y de los Jueces en América Latina, establece que el Juez debe recibir una remuneración que sea suficiente para asegurar su independencia económica, conforme los requerimientos propios que la dignidad de su ministerio le imponen, debiendo ser suficiente para cubrir las necesidades de él y de su familia. La remuneración no debe depender de apreciaciones o evaluaciones de la actividad del juez y no podrá ser reducida, por ningún concepto, mientras preste servicio profesional.

Estos hechos y su trascendencia justifican que nos dirijamos a la Honorable Comisión Interamericana de Derechos Humanos, a fin de que:

a. Brinde a la petición planteada por la Asociación de Magistrados del Perú, **el trámite prioritario per saltum** previsto en el artículo 29° del Reglamento de la Comisión, en virtud de que
   i. el transcurso del tiempo privara a la petición de su efecto útil, y
   ii. el efecto que se espera de la decisión de la CIDH en orden a remediar la situación estructural grave de desprotección a los principios de autonomía de los jueces y de acceso a la justicia tiene una enorme importancia en el goce de los derechos humanos del conjunto de las y los ciudadanos del Perú.
b. Conceda a la Asociación Nacional de Magistrados del Perú **una Audiencia Preliminar** en su próximo periodo de sesiones ordinarias, en la que con la participación de las Autoridades del Estado Peruano se pueda examinar la situación planteada y encontrar con el auxilio de la CIDH un camino de solución de la misma.

Foz do Iguaçu, 11 November, 2014.

## 2014 IAJ Resolution on Yemen

IAJ·UIM International Association of Judges Union Internationale des Magistrats

The International Association of Judges (IAJ) follows very closely the developments in Yemen. The Central Council of IAJ at its meeting in Foz do Iguaçu on 11th November 2014 was informed by the Yemeni Judiciary Association about the situation of the Judiciary in that country. After intense debate, the Central Council adopted the following

**RESOLUTION**

The Central Council of the International Association of Judges recognizes the difficulties currently facing the judiciary in Yemen and extends its support to the Yemeni judiciary in its struggle for judicial independence.

Foz do Iguaçu, 11 November 2014.



IAJ·UIM International Association of Judges Union Internationale des Magistrats

L'Union Internationale des Magistrats (UIM) suit de près la situation au Yemen. Le Conseil Central de l'UIM lors de sa réunion à Foz do Iguaçu le 11 novembre 2014 a été informé par l'Association des Magistrats du Yemen sur la situation du pouvoir judiciaire dans ledit pays. Après un débat intense, le Conseil Central a adopté la suivante

**RESOLUTION**

Le Conseil Central de l´Union Internationale des Magistrats est conscient des difficultés rencontrées par la magistrature au Yemen et lui exprime son soutien dans sa lutte pour l´indépendance judiciaire.

Foz do Iguaçu, 11 novembre 2014.

## 2014 IAJ Declaration on Iraq

IAJ·UIM International Association of Judges Union Internationale des Magistrats

The International Association of Judges (IAJ) follows very closely the developments in Iraq. The Central Council of IAJ at its meeting in Foz do Iguaçu on 11th November 2014 was informed by the Iraqi Judiciary Association about the situation of the Judiciary in that country. After intense debate, the Central Council adopted the following

**RESOLUTION**

The Central Council of the International Association of Judges recognizes the difficulties currently facing the judiciary in Iraq and extends its support to the Iraqi judiciary in its struggle for judicial independence.

Foz do Iguaçu 11 November 2014



IAJ·UIM International Association of Judges Union Internationale des Magistrats

L'Union Internationale des Magistrats (UIM) suit de près la situation en Irak. Le Conseil Central de l'UIM lors de sa réunion à Foz do Iguaçu le 11 novembre 2014 a été informé par l'Association des Magistrats de l'Irak sur la situation du pouvoir judiciaire dans ledit pays. Après un débat intense, le Conseil Central a adopté la suivante

**RESOLUTION**

Le Conseil Central de l´Union Internationale des Magistrats est conscient des difficultés rencontrées par la magistrature en Irak et lui exprime son soutien dans sa lutte pour l´indépendance judiciaire.

Foz do Iguaçu, 11 novembre 2014

2014 Resolution on South Africa

IAJ·UIM International Association of Judges Union Internationale des Magistrats

# RESOLUTION
# on South Africa

That the President of the International Association of Judges, be requested to address a letter on behalf of the Central Council of the International Association of Judges, to the Chief Justice and the Chairperson of the Magistrates Commission of South Africa, in which it voices its displeasure at the silencing of a bona fide Association representing the majority of judicial officers, by charging individual members with misconduct when they, in their capacity as office bearers of the voluntary Association, articulate the genuine grievances of the Lower Court Judiciary.



IAJ·UIM International Association of Judges Union Internationale des Magistrats

# RESOLUTION
# sur l'Afrique du Sud

Il est demandé que le Président de l'Union Internationale des Magistrats adresse, pour le compte du Conseil central de l'Union Internationale des Magistrats, un courrier au Président de la Cour Suprême et au Président de la Commission des magistrats d'Afrique du Sud, dans lequel il exprime sa désapprobation face à la réduction au silence d'une association de bonne foi représentant la majorité des magistrats, en accusant certains de ses membres de faute professionnelle lorsque, en leur qualité de responsables d'une association sans but lucratif, ils exposent les doléances sincères de la Magistrature de première instance.

## 2014 Resolution of the Central Council on Timor East

asjp associação sindical dos juízes portugueses

UIM RESOLUTION

ABOUT THE PORTUGUESE JUDGES WORKING IN EAST-TIMOR

ADOPTED BY THE CENTRAL COUNCIL

ON 11TH NOVEMBER 2015 IN FOZ DO IGUAÇU

1. Introduction

Judges, prosecutors and public defenders, mostly from Portuguese-speaking countries, have formed part of Timor-Leste's judicial system since the restoration of independence in 2002. Others work as judicial advisers in associated bodies like the Anti-Corruption Commission and the Judicial Training Centre. Over time, suitably trained East Timorese have progressively replaced these positions. Some 50 current judicial officers are foreign nationals, including an estimated 12 per cent of judges. International judges are required by law to have five years' experience.

The parliament and the government of East-Timor have decided to end the international judiciary cooperation agreements and expelled several Portuguese Judges who were there because of those agreements (East-Timor parliament Resolution n.º 11/2004 from 24/10 and government Resolutions n.ºs 29/2014 from 24/10 and 32/2014 from 31/10).

Those judges were seconded to East-Timor under an international cooperation agreement but were assuring in full their judicial tasks.

Timor-Leste's Constitution provides guarantees for the separation of powers, and for judicial independence. As in other jurisdictions, judges cannot be dismissed by a simple parliamentary motion. This requires a process of the Superior Council of the Judiciary (Conselho Superior da Magistratura Judicial), which has managerial and disciplinary oversight of judicial officers. Such processes are addressed to individual judicial officers accused of misconduct or poor performance.





asjp associação sindical dos juízes portugueses

The SCJ (CSMJ) comprises the president of the Court of Appeal and members appointed respectively by the president, the government, parliament and the legal profession. This body is charged with regulating the judiciary to minimise the scope for direct government interference.

It is not for the parliament or the government to remove judicial officers through a resolution. This can only be done in accordance with the law. Removing judicial officers arbitrarily, whether international or national, threatens the rule of law and a citizen's right to a fair trial in Timor-Leste.

While the legality of the resolution is being questioned by a range of political and judicial figures, the resolutions from the parliament and the government clearly undermine the principles of an independent judiciary. There is deep speculation over the meaning of the resolution, but the response seems to be conflating a number of issues.

The Timor's President of the Court of Appeal (also President of the Superior Council of the Judiciary) issued a directive to all Chief Justices stating the resolutions have no effect and that international judges and court staff shall continue their functions.

Those resolutions were taken without the knowledge and the agreement of East-Timor Judges Superior Council whose president decided not to accept that decisions and declared them ineffective. The Council has also Stated that it is the only organism that has the competence to nominate, transfer or dismiss Judges and also to evaluate their knowledge and to sanction them.

The Portuguese Government, through the Ministry of Foreign Affair and Ministry of Justice, decided, is reassessing the judicial cooperation policies with East-Timor.

This situation is an offence to the principles of autonomy and independence of judges which has been universally proclaimed

2. Request

Given these circumstances, the Portuguese Association of Judges (Associação Sindical dos Juízes Portugueses) also on behalf of other judges associations of Portuguese speaking countries and of the International Union of Portuguese speaking judges, requests IAJ-UIM to adopt the following resolution condemning this violation of the principle of the separation of powers and of the independence of the courts and to demand the East-Timor government and parliament the non interference on the judiciary.

asjp associação sindical dos juízes portugueses

3.Proposed resolution

Considering that:

1. East-Timor government and parliament decisions that expelled several Portuguese Judges who were there because of international judiciary cooperation agreements (East-Timor parliament Resolution n.º 11/2004 from 24/10 and government Resolutions n.ºs 29/2014 from 24/10 and 32/2014 from 31/10) are a threat to the basic principles of judicial independence and rule of law and seriously endanger the independence of the judiciary;

2. Furthermore, the decisions constitute a serious attack on the trust and the legitimacy of justice in East-Timor and also all the States which are involved in international judicial cooperation;

UIM adopt the present resolution condemning this violation of the principle of the separation of powers and of the independence of the courts and requiring the East-Timor government and parliament not to interfere in the judiciary.

3





IAJ·UIM International Association of Judges Union Internationale des Magistrats

**Resolution on Uruguay**

The Central Council of IAJ is aware of the difficulties that Uruguayan judges are facing and expresses its support with regard to the due respect of the Judicial Organization Law in vigour since 1985.
The Central Council particularly supports the Uruguayan Association of Judges (*Asociación de Magistrados del Uruguay*) in its efforts towards the execution of two judgments issued by the Supreme Court of Justice, which are not subject to revision and declared unconstitutional two Laws because they looked to violate the parity between the scales of salaries of the Executive and Judicial Powers, and were passed in breach of the principles of independence and balance between the State's Powers.

Foz do Iguaçu, 13th November 2014

IAJ·UIM International Association of Judges Union Internationale des Magistrats

**Résolution sur l'Uruguay**

Le Conseil Central de l'Union Internationale des Magistrats reconnaît les difficultés auxquelles sont confrontés les juges uruguayens et exprime son soutien à la pleine mise en vigueur de la loi organique de la magistrature, en vigueur depuis 1985. En particulier, le Conseil Central soutient l'Association des Magistrats d'Uruguay (la *Asociación de Magistrados del Uruguay*) dans sa quête pour la résolution de deux manquements constitutionnels dictés par la Cour Suprême de Justice et qui n'appellent aucune révision. Ces manquements constitutionnels concernent deux lois cherchant à fragiliser la parité des échelles de salaires entre le pouvoir exécutif et le pouvoir judiciaire et à fragiliser par conséquent les principes d'indépendance et d'équilibre entre les pouvoirs de l'Etat.

Foz do Iguaçu, 13 novembre 2014



IAJ·UIM International Association of Judges Union Internationale des Magistrats

**Resolución sobre Uruguay**

El Consejo Central de la UIM reconoce las dificultades que enfrentan los jueces uruguayos y expresa su apoyo por el respeto de la ley orgánica de la judicatura, vigente desde 1985. En especial, el Consejo Central apoya la Asociación de Magistrados del Uruguay en su búsqueda del cumplimento de los dos fallos de inconstitucionalidad dictados por la Suprema Corte de Justicia y que no admiten otra revisión, respecto de dos leyes que buscaron vulnerar la paridad de las escalas de salarios entre los poderes ejecutivo y judicial y vulnerar por lo tanto los principios de independencia y de equilibrio entre los poderes del Estado.

Foz do Iguaçu, 13 de noviembre 2014

**2014 Resolution of the Central Council on Turkey**

IAJ·UIM International Association of Judges Union Internationale des Magistrats

**Resolution on Turkey**

The International Association of Judges, being concerned about the recent violations of the independence of the Judiciary and of the difficulties that follow for the Turkish judges and prosecutors, expresses its entire support for the Turkish judges.

The International Association of Judges supports YARSAV's courageous action to defend the principles of the rule of law.

The International Association of Judges urges the Turkish authorities to respect the international standards for an independent and impartial Judiciary, and emphazises the absolute necessity to observe the separation of powers.

Foz do Iguaçu, 13th November 2014



IAJ·UIM International Association of Judges Union Internationale des Magistrats

**Résolution sur la Turquie**

L'Union Internationale des Magistrats, inquiète des atteintes récentes à l'indépendance de la Justice et des difficultés qui en résultent pour les magistrats turcs, leur apporte son entier soutien.

L'Union Internationale des Magistrats appuie l'action courageuse de YARSAV pour défendre les principes d'un Etat de droit.

Elle appelle les autorités turques à respecter les standards internationalement reconnus d'une justice indépendante et impartiale et rappelle la nécessité absolue d'assurer la séparation des pouvoirs et l'inamovibilité des juges.

Foz do Iguaçu, 13 novembre 2014

IAJ·UIM International Association of Judges
Union Internationale des Magistrats

**Resolución sobre Turquía**

La UIM preocupada por las vulneraciones recientes a la independencia de la Justicia y consciente de las dificultades que se derivan para los magistrados turcos, les garantiza su pleno apoyo.

La UIM valora el trabajo valiente de Yarsav en defensa de los principios del Estado de derecho.

La UIM pide a las autoridades turcas que respeten las normas reconocidas a nivel internacional de una justicia independiente e imparcial y recuerda la absoluta necesidad de asegurar la separacion de poderes y la inamovibilidad de los jueces.

Foz do Iguaçu, 13 de noviembre 2014





INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI
PALAZZO DI GIUSTIZIA - PIAZZA CAVOUR - 00193 ROMA - ITALY

The Central Council of the International Association of Judges,

convened in Yalta, on October the 10th, 2013 adopts the following

**Resolution**

The International Association of Judges, convened in Yalta (Ukraine) from the 5th to the 10th of October 2013, after it held a Conference relating to *High Councils for the Judiciary,* the Central Council:

**Supports** the constitutional amendments under consideration in Ukraine aimed at strenghtening the independence of the High Council for the Judiciary (*Vyschaya Rada Yusticii*) of Ukraine and the model of appointment and career of judges assessed by the Venice Commission (the 15th of June 2013) of the Council of Europe.

INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI

PALAZZO DI GIUSTIZIA - PIAZZA CAVOUR - 00193 ROMA - ITALY

*Le Conseil Central de l'Union Internationale des Magistrats*

*Réuni à Yalta, le 10 octobre 2013, adopte la suivante*

***Résolution***

L'Union Internationale des Magistrats, s'est réunie à Yalta (Ukraine), du 5 au 10 octobre 2013 et a ensuite tenu une Conférence concernant les Conseils Supérieurs de la Magistrature. Le Conseil Central :

soutient les amendements constitutionnels en cours d'évaluation en Ukraine visant à renforcer l'indépendance du Conseil Supérieur de la Justice (*Vyschaya Rada Yusticii*) d'Ukraine et le modèle de nomination et carrière des magistrats, documents qui ont été évalués par la Commission de Venise (le 15 juin 2013) du Conseil de l'Europe.

# VACLAV HAVEL PRICE


## INTERNATIONAL MEETING: "STOCKHOLM+50: A HEALTHY PLANET FOR THE PROSPERITY OF ALL – OUR RESPONSIBILITY, OUR OPPORTUNITY"

### MONDAY, JUN 27TH 2022

The **United Nations General Assembly,** in its resolutions 75/280 of 24 May 2021 and 75/326 of 10 September 2021, decided to convene an **international meeting** entitled **"Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity"**, in Stockholm, on **2 and 3 June 2022,** during the week of World Environment Day, to commemorate the 50 years since the United Nations Conference on the Human Environment and its outcome documents, as a contribution to the environmental dimension of sustainable development to accelerate the implementation of commitments in the context of the decade of action and delivery for sustainable development, including a sustainable recovery from the coronavirus disease (COVID-19) pandemic.

The international meeting included plenary meetings was held on Thursday, 2 June and Friday, 3 June 2022, as well as leadership dialogues held in parallel with the plenary meetings on both days.

The **IAJ** was represented by its President **, Mr Igreja José Matos,** who attended, as one of the panellists, at the side event of the afternoon of June 2, entitled : *"Judges, the Environmental Rule of Law and a Healthy Planet Since the 1972 Stockholm Declaration: Achievements, challenges and opportunities".*

More information

## GLOBAL JUDICIAL INTEGRITY NETWORK

Since its launch on 9 April 2018, the Network has become a global movement 'of judges, for judges' and a trusted space on the topic of judicial integrity. The Network has organized numerous events, created innovative opportunities for experience-sharing and developed highly relevant guidance materials. Moreover, by serving as a global hub on judicial integrity, the Network has been supporting and connecting other relevant initiatives and therefore amplifying their positive impact. The presence of the IAJ in their activities has been constant and two IAJ Vice Presidents are members of the Advisory Board.

- The Global Judicial Integrity Network's Webinar – Promoting Active Participation of Women in the Judiciary - Read more
- Global Judicial Integrity Network - Read more
- International meeting : "Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity" - Read more
- 2nd IUCN WCEL World Environmental Law Congress: Environmental Law 2030 and Beyond - Read more
- 22nd International Conference of Chief Justices of the World - Read more
- Request to support women judges in Afghanistan - Read more
- Further concerns about Afghanistan - Read more
- Global Judicial Integrity Network – Maintaining judicial integrity and ethical standards in practice - Read more
- Special Anniversary Event of the Global Judicial Integrity Network - Read more
- Global Judicial Integrity Network: Virtual Meeting - Read more
- 21st International Conference of Chief Justices of the World (India) - Read more
- Three Articles of the "Zanger" (Lawyer) Kazakh Judicial Magazine concerning IAJ - Read more
- UNGA CONFERENCE 2019 - Read more
- Second High-Level Meeting of the Global Judicial Integrity Network of UNODC in Doha - Read more
- Publication for the Global Judicial Integrity Network from 2018-2019 - Read more

## PROVIDENT FUND

The IAJ decided, in 2016, to create a special fund for assistance to judges and prosecutors—as well as their families—who are victims of their regime's persecutions. Here too, without dwelling on aspects that are confidential, it can be said that up to now the IAJ has paid out sums (donated by judges, judicial associations and judicial bodies from all over the world) of a total amount of about € 245,000.00, intended to help the families of **Turkish judges** and prosecutors who were persecuted by the regime, deprived of their functions and often imprisoned. A Committee, specially constituted within the **European Group of the IAJ**, examines the requests for support and approves the disbursement, through a network that operates in a confidential way, but in constant contact with the IAJ.



## COOPERATION WITH INTERNATIONAL INSTITUTIONS

"The IAJ has consultative status with the United Nations (with specific reference to the International Labour Office and the U.N. Economic and Social Council) and with the Council of Europe. Representatives of the IAJ are also active in UNO branches and the Council of Europe offices, such as the Consultative Council of European Judges **(CCJE**) and the European Commission for the Efficiency of Justice (**CEPEJ).** The IAJ provides on a regular basis experts to assist in the field of justice, to the **UNO, European Union, Council of Europe and the Federation of Latin American Judiciary (FLAM).**

Moreover, the EAJ has been invited in several occasions to participate in meetings of experts organised by the **European Commission** on issues related to jurisdiction.

## RELATIONSHIPS OF THE IAJ WITH UN INSTITUTIONS*

*By Barbara Scolart1**

### 1.The United Nations and the role of non-governmental organizations

The Charter of the United Nations envisages, in its art. 71, a cooperation with non-governmental organizations: "The Economic and Social Council [ECOSOC] may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence."

A definition of non-governmental organizations (NGO) can be derived from the praxis and the documents elaborated within the Organization of the United Nations since its foundation. In particular, a definition of NGO can be found in the ECOSOC Resolution 288B (X) of 27 February 1950, according to which a non-governmental organization is "any international organization that is not founded by an international treaty".

Article 71 neither indicates the criteria that must be adopted to evaluate the admission of non- governmental organizations nor states the contents of the consultative relationship between the NGOs and the ECOSOC. Therefore, it has been for the ECOSOC itself to adopt the arrangements for consultations with the NGOs, with an important specification: such arrangements can be made with international organizations whose sphere of activity falls within the competence of ECOSOC, whose aims are consistent with the principles enshrined in the UN Charter, and whose dimension is representative of its field of action. As to the national NGOs, they would only be accepted after consulting the relevant government.

As to the discipline of the consultation envisaged in art. 71, Resolution 288 B (X) represents the first attempt to regulate the cooperation between the UNO and NGOs. After this, the ECOSOC conducted two reviews to modify, update and implement the system created in 1950: the first dated 23rd May 1968, with the approval of

*This article is based on the volume *History of the International Association of Judges*, Rio de Janiero, 2008, Forense ed.

the resolution 1296 (XLIV); the second dated 25th July 1996, resolution 1996/31.

Since the beginning of their cooperation with the UN, the NGOs were divided into three categories. Associations falling within Category A had a "basic interest in most of the activities of the Council"; those within Category B had "a special competence" in some fields of activity of the ECOSOC; and Category C organizations were primarily charged "with the development of public opinion and with the dissemination of information".

The last category was suppressed in 1950 and replaced by a Register of organizations supposed to be very specialized and which might be consulted on an ad hoc basis, when the ECOSOC might feel the need for their help.

After the major review made in 1968, the labels were changed to Category I, Category II and the so-called Roster, the classification remaining essentially unchanged.

It must be stressed that the distribution of the NGOs into three categories corresponded to a diversity in their rights of participation to the works of the ECOSOC. The basic principle, valid for all the NGOs, was that they must have fewer rights in the Council than the observer delegations from specialised agencies or governments that were not Council members.

Given this, and affirmed the general right for all NGOs to attend ECOSOC meetings, Category A NGOs could circulate written statements to the members of the Economic and Social Council and could also expect to address a Council committee or even the full Council. As to the other NGOs, the titles of their statements were put on a list and the full statements could only be circulated upon request of a member of the ECOSOC.

Through the review process of 1950 (ECOSOC Resolution 288B(X) of 27th February 1950), besides the abolishing of Category C status and its substitution with the listing on the Register, one of the main changes was the reduction of the volume of papers coming from NGOs, which were since then allowed to present to the Council only statements no longer than 2000 words (the limit being of 500 words for Category B NGOs).

For the following 18 years, Resolution 288B(X) remained the definitive set of rules regulating the arrangements for consultative status.

Meanwhile, the UNO experienced some crucial events that reflected also upon its cooperation with NGOs. Among them, the Cold War with the consequent opposition between the Western conception of human rights and the role of non institutional actors and the Eastern (or communist) perspective and its denial of the rights of NGOs to interfere in the internal affairs of sovereign States (in particular when it ended in a criticism of the State approach towards human rights).

[1] Former assistant to the Secretary-General of IAJ



Also, in those years the UN were facing an increase in the membership thanks to the new Asian and African members that had been joining the Organization from 1955 onwards, following the decolonisation process. This shifted the political balance of the Organization quite far from the Western dominance that had characterized its first twenty years of life.

Thus, a new resolution was adopted by the ECOSOC in 1968 (Resolution 1296(XLIV) of 23rd May), whose main contents (apart from the re-labelling of the consultative categories, already mentioned above) concerned the financing of the NGOs (which must be based predominantly on membership fees), their global dimension, the introduction of the duty for NGOs to submit reports on a regular basis (every four years) and the provisions to suspend or withdraw consultative status.

At the beginning of the 1990s, the relationship between NGOs and the United Nations underwent a new and significant evolution as a result of the UN Conference on Environment and Development, also known as the 'Earth Summit', held in Rio de Janeiro in 1992.

The breadth of the participation of NGOs in the Conference was unprecedented and the outcome was not anticipated at the start of the process of convening the conference. Thus, Agenda 21, one of the five main documents produced by the Earth Summit, echoed the feature of NGOs as true actors on the international scene devoting one of its sections to the participation of all "social groups" in the debate about sustainable development.

In particular, Chapter 27 of Agenda 21 is specifically devoted to "Strengthening the Role of Non-governmental Organizations: Partners for Sustainable Development". It is worth mentioning some paragraphs, to outline how NGOs are regarded in the UN context: "Non-governmental organizations play a vital role in the shaping and implementation of participatory democracy. Their credibility lies in the responsible and constructive role they play in society. […] The nature of the independent role played by non-governmental organizations within a society calls for real participation; therefore, independence is a major attribute of non-governmental organizations and is the precondition of real participation" (Chapter 27, paragraph 1).

Some paragraphs of Chapter 27 of Agenda 21 concern more specifically the need to reorganize the cooperation of the UNO with NGOs.

In this sense, for example the wording of paragraph 6: "With a view to strengthening the role of non-governmental organizations as social partners, the United Nations system and Governments should initiate a process, in consultation with non-governmental organizations, to review formal procedures and mechanisms for the involvement of these organizations at all levels from policy- making and decision-making to implementation".

Moreover, paragraph 9 stated that "the United Nations system, including international finance and development agencies, and all intergovernmental organizations and forums should, in consultation with non-governmental organizations, take measures to (a) review and report on ways of enhancing existing procedures and mechanisms by which non-governmental organizations contribute to policy design, decision-making, implementation and evaluation at the individual agency level, in inter-agency discussions and in United Nations conferences [...]".

Thus, the course of the Earth Summit and its outcomes gave impetus to the last revision of the ECOSOC's arrangements for consultation with NGOs, which took place in 1996, with the resolution 1996/31 (25th July 1996), by which the ECOSOC acknowledged "the breadth of non-governmental organizations' expertise and the capacity of non-governmental organizations to support the work of the United Nations" (preamble).

Resolution 1996/31 defines three classes of consultative status, which are equivalent of Category I, Category II and Roster status defined in resolution 1296 (XLIV): General, Special and Roster.

Following the definition provided by the resolution, "organizations that are concerned with most of the activities of the Council and its subsidiary bodies and can demonstrate to the satisfaction of the Council that they have substantive and sustained contributions to make to the achievement of the objectives of the United Nations in fields set out in paragraph 1 above, and are closely involved with the economic and social life of the peoples of the areas they represent and whose membership, which should be considerable, is broadly representative of major segments of society in a large number of countries in different regions of the world shall be known as organizations in general consultative status" (paragraph 22).

Organizations in special consultative status are those "that have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the Council and its subsidiary bodies, and that are known within the fields for which they have or seek consultative status" (paragraph 23).

"Other organizations that do not have general or special consultative status but that the Council, or the Secretary-General of the United Nations in consultation with the Council or its Committee on Non-Governmental Organizations, considers can make occasional and useful contributions to the work of the Council or its subsidiary bodies or other United Nations bodies within their competence shall be included in a list (to be known as the Roster). This list may also include organizations in consultative status or a similar relationship with a specialized agency or a United Nations body. These organizations shall be available for consultation at the request of the Council or its subsidiary bodies. The fact that an organization is on the Roster shall not in itself be regarded as a qualification for general or special consultative status should an organization seek such status" (paragraph 24).

As in the past, the division into three classes is the basis to determine the extent of the rights granted to NGOs in consultative status, since such extent depends on the category in which a non-governmental organization has been admitted (see paragraphs 27-39 of resolution 1996/31, concerning consultations with the Council and with Commissions and other subsidiary organs of the Council; no differences in rights are envisaged for the participation of non-governmental organizations in international conferences convened by the United Nations and their preparatory process).



**2. The cooperation between the IAJ and the UNO: from the beginning to the 1990s.**

Adopting the criteria of classification elaborated by the United Nations, the International Association of Judges is a non-governmental organization (NGO). This nature of the institution arises from the character of its Constitution, which is not an international treaty.

The membership in the Association (art. 2 of its Constitution) is reserved to national associations or national representative groups of judges, thus excluding any institutionalized or political structure (such as the Ministry of Justice and even the High Councils of the Judiciary or analogous bodies).

As to the goals of the association (art. 3 of the Constitution), they are the safeguarding of the independence of the judicial authority, as an essential requirement of the judicial function and guarantee of human rights and freedom; the safeguarding of the constitutional and moral standing of the judicial authority; the increasing and perfecting of the knowledge and the understanding of Judges; the study of judicial problems.

The financing of the Association is based on annual contributions "which ordinary [and extraordinary] members are required to pay to the General Secretariat to meet the running costs of the Association" (Constitution, art. 7.1), thus meeting the requisite demanded by paragraph 13 of resolution 1996/31 ("The basic resources of the organization shall be derived in the main part from contributions of the national affiliates or other components or from individual members").

In the 1970s the Central Council of the IAJ began to discuss possible cooperation with the United Nations and to seek an opportunity to request the admission of the Association to the ECOSOC in consultative status.

Following a decision of the Central Council, the IAJ's President, Mr Alfons De Vreese (Belgium), submitted in 1975 an official application to the UN asking that the IAJ, as a non-governmental organization, be granted the consultative status with the ECOSOC. Mr De Vreese wrote also to Professor Eric Suy, UN Under-Secretary-General for Legal Affairs, and to Mr Schreiber, Director of the Commission for Human Rights. Mr Voitto Saario, Finnish delegate to the IAJ, who had in several occasions represented his country in front of the UN, also took some personal steps in favour of the application.

Professor Suy answered Mr De Vreese's letter, expressing the opinion that the IAJ application would meet a favourable welcome and informing him that the application would be discussed by the ECOSOC Committee in its meeting scheduled in February 1977.

In March 1977 the IAJ's President travelled to New York to personally support the application of the IAJ, but he was not heard by the Committee and he then learnt that the IAJ application had met the strong opposition of the Russian delegate in the Committee.

Nevertheless, thanks to the intervention of the Tunisian delegate, the Committee decided to admit the IAJ in the Roster, the list envisaged by article 19 of the Resolution 1296(XLIV) of 23rd May 1968 grouping the associations "which the Council, or the Secretary-General of the United Nations […] considers can make occasional and useful contributions to the work of the Council or its subsidiary bodies or other United Nations bodies".

This solution, although not fully meeting the wishes of the IAJ, was regarded by the Association with satisfaction because it allowed it to participate in the examination of problems and questions submitted for the attention of the technical bodies of the UNO.

The cooperation with the Organization started immediately after, with the drafting, by the IAJ Secretary-General Mr Enzo Meriggiola (Italy), of a reasoned opinion on the creation of a UN High Commissioner for Human Rights and of Regional Commissions for Human Rights as well as on ways and means for improving the mechanisms of national periodical reports and of examination of petitions claiming the violation of human rights2.

2 United Nations General Assembly resolutions 3136 (XXVIII) of 14th December 1973, 3221 (XXIX) of 6th November 1974 and 3451 (XXX) of 9th December 1975.

In view of future occasions of cooperation with the technical bodies of the UNO, the IAJ decided that copies of the possible UN requests of advice should be transmitted to all the IAJ member associations, to allow them to express their views which would be collected and summarised by the IAJ Secretary-General and then sent to the UN. In this way, the cooperation with the UN would have been the result of the contribution of the whole Association.

In the following years, the IAJ received several requests for advice by UN bodies and participated in some sessions of the Commission for Human Rights in Geneva and in seminars organised by it, thanks to the zeal of a Swiss judge, Mr Bron, who attended those meetings on behalf of the IAJ.

In 1980 the IAJ Vice-president Mr Hédi Saied (Tunisia) took part in the 6th United Nations Congress on the prevention of crime and the treatment of the offenders, which was held in Caracas from 25th August to 5th September. Mr Saied took part in the debates both as representative of the Tunisian Government and as Vice-President of the IAJ. In this last capacity, he amply illustrated the activity of the Association and, in particular, the contributions offered by the IAJ Study Commissions to the solution of certain problems concerning criminal justice. Mr Saied also wrote a report, whose aim was to clarify some aspects of a draft Resolution – which was then approved by the Congress – in which he stressed, inter alia, the need, common worldwide, for independent, expert and impartial judges.

Although involved in consultations with technical bodies of the United Nations, the visibility and the contribution of the IAJ to the international debate on human rights and judicial reforms remained slightly perceived, both at national and international levels. To overcome this difficulty, the IAJ decided to renew its efforts in view of obtaining full consultative status with the ECOSOC and at the same time decided to implement its participation in the initiatives and congresses of the UNO.

It must be noted that in 1979 the Committee of Ministers of the Council of Europe accepted the request for admission of the IAJ among the non-governmental organizations having consultative status with the Council itself.

The year 1981 was dedicated by the United Nations to the handicapped person. The IAJ echoed this initiative charging two of its Study Commissions with the comparative study of some aspects of substantive and procedural law concerning the handicapped person: thus, the 2nd Study Commission dealt with the "Protection of the interests of the mentally handicapped in private law" and the 3rd Study Commission with the "Procedural protection for physically or mentally handicapped persons". A UN representative, Dr Neudok, attended the working sessions of the Study Commissions in Vienna, thus showing the interest of the UN towards the studies devoted by the IAJ to the protection of physically disabled or mentally handicapped persons.



During the 1981 meeting in Vienna, the Central Council of the IAJ also unanimously approved a resolution expressing IAJ's appreciation for the work done by the Organization of the United Nations in favour of the independence of the judicial power and for the protection of the disabled persons:

> *"The International Association of Judges expresses its satisfaction to the United Nations for the work that it has accomplished so far in the areas of the independence of the judiciary and the protection of the rights of disabled persons, and hopes that the U.N. will continue to give priority to these two important questions, taking into consideration the conclusions of the present meeting of the Association".*

Besides its relations with the UN and the Council of Europe, during the 1980s the IAJ strengthened its liaisons with other international institutions, such as the Institut Supérieur International des Sciences Criminelles and four main non-governmental organizations dealing with criminal law and criminology and having consultative status with the ECOSOC: the International Association of Criminal Law, the Fondation Internationale Pénale et Pénitentiaire, the International Society for Criminology and the Société Internationale de Défense Sociale. These institutions invited a representative of the IAJ (who, on the occasion, was the Secretary-General) to their meeting in Milan in 1982.

The cooperation with the UNSDRI (United Nations Social Defence Research Institute) finally led to the financing of the English edition, revised, of the book "Le juge dans la nouvelle société": "The role of the judge in contemporary society", UNICRI publication No. 24, 1984 (out of print).

The IAJ was also involved, thanks to the participation of Mr. Günter Woratsch (Austria) and Mr. Giovanni Longo (Italy), in the preparatory works of the 7th International Congress of the United Nations on Crime Prevention and the Treatment of Offenders (which took place in Milan, 1985). In 1984 a preparatory conference of the Congress was held in Varenna (dealing with aspects of criminal policy such as torture and death penalty) and Vienna (dealing with the independence of the judiciary) and Mr Woratsch, Vice-President of IAJ, participated on behalf of the IAJ. The 7th Congress on Crime Prevention took place in Milan from 26th August to 6th September: the representatives of the IAJ, Mr Woratsch and Mr Longo (Secretary General), attended the sessions dedicated to juvenile delinquency and to the independence of the judiciary.

In 1984, the President of the 3rd Study Commission, together with the IAJ Secretary-General, Mr Longo, took part, on behalf of the IAJ, to a seminar dealing with juvenile delinquency organized in Rome by UNSDRI: on that occasion, the IAJ was the only NGO invited to attend the meeting.

In 1985, echoing the proclamation by the United Nations of the International Youth Year, the third Study Commission was charged to study the subject: "The judge faced with juvenile delinquency".

In 1985, at the meeting in Oslo, Mr Helge Rostad, representative of UNSDRI, intervened to explain the activities and the programme of the Institute and presented also a brochure published by UNSDRI in collaboration with the IAJ that he described as "a message to the world on the problems of justice".

Besides the remarkable involvement of the IAJ in the initiatives of the UN and its subsidiary bodies, the year 1985 must be remembered because of a significant achievement of the Association: in 1985 the IAJ was granted the Category II consultative status with the ECOSOC, thus becoming able to designate official representatives to the UN headquarters in New York and to the UN offices in Geneva and Vienna. The Presidency Committee of IAJ decided to appoint Mr. Günter Woratsch as its representative in Vienna. Mr. Woratsch attended all UN

meetings in Vienna dealing with topics of interest for IAJ, i.e. judicial independence, impartiality and liability.

In the following years, the cooperation with the Rome seat of UNSDRI allowed the participation of IAJ's representatives to the works of a panel whose aims were to formulate draft implementation procedures of the general principles on the independence of the judiciary approved in the Congress of Milan. The project was to be discussed in a meeting under the auspices of the UNO to be held in Baden bei Wien at the end of 1987.

The UNSDRI also invited a representative of the IAJ (the Secretary-General pro tempore, Mr Longo) to participate in a mission to Malta to evaluate the possibility of carrying out research programmes of the Institute in that country.

The UN Office in Vienna invited the IAJ to send a representative to participate in the works of the experts committee charged to study the issue of the independence of the judiciary in view of the forthcoming UN Congress on the prevention of crime and the treatment of offenders. The committee finished the drafting of a project of "procedures for the implementation of basic principles on the independence of the judiciary", already approved by the United Nations General Assembly in 1987 (which invited all the member states to apply the principles and to transmit periodical reports on their internal legislation and the practical enforcement of the principles). One of the main achievements of the IAJ was the inclusion in the project, under proposal of the Association, of a provision enabling the NGOs in consultative status with the ECOSOC (thus, also the IAJ) to inform the UN Secretary-General of the violation or misapplication of the general principles on the independence of judges. Such information would be used by the UN Secretary-General to make his report every five years on the implementation of the principles and their violations.

The cooperation with the UNICRI, United Nations Interregional Institute for Crime Research and Justice (the former UNSDRI) led in the organization of a seminar, held in the Dominican Republic in November and December 1989, on "La justice et le développement démocratique en Amérique Latine, en comparaison avec la situation en Italie , dans le cadre de l'Europe". The seminar was co-financed by UNICRI, with the participation of the ILANUD (Instituto Latino Americano de las Naciones Unidas por la prevencion del delito y el tratamiento del delincuente) and funds of the Italian Government. University professors, lawyers and judges attended the meeting; among them Mr Antonio Brancaccio, First President of the Italian Corte di Cassazione, and Mr Philippe Abravanel (Switzerland), Vice-president of the IAJ.

In 1996, during its meeting in Amsterdam, the Central Council of the IAJ approved a motion of support for the efforts made within the UN for the creation of an International Criminal Court.

> *"In response to the serious attacks which touch the international community as a whole, the UN has proposed the creation of an International Criminal Court.*
>
> *A permanent High Jurisdiction with an international status would ensure an independent position and a strong legitimacy which would allow more efficient crime prevention at an international level as well as prosecution and repression of crime.*
>
> *The IAJ has always aimed at developing international cooperation for the defence of the principle of the State based on the rule of law and for the improvement of justice throughout the world.*
> *For this reason the IAJ wishes to give strong support for the establishment of a permanent International criminal Court."*[3]

In 2005, Mr. Ernst Markel, Honorary President of IAJ, was appointed by the Presidency Committee as a second representative of IAJ at the UN office in Vienna.

[3] The treaty establishing International Criminal Court was signed in Rome on 17th July 1998 and entered into force on 1st July 2002.


The 65th Annual Meeting

and *70th Anniversary*

of the IAJ